

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### Statutory Authority

The statutory authority for this action is provided by Section 110 of the CAA, as amended (42 U.S.C. 7410).

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 23, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2011-0304 FRL-9288-1]

### Approval and Promulgation of Implementation Plans; State of Kansas

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Kansas addressing the requirements of Clean Air Act (CAA) sections 110(a)(1) and (2) for the 1997 revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a)(1) requires that each state adopt and submit a SIP to support implementation of each new or revised NAAQS promulgated by the EPA and these SIPs are commonly referred to as "infrastructure" SIPs. EPA believes that Kansas' infrastructure SIP adequately addresses the elements described in section 110(a)(2) and further described in the October 2, 2007 guidance for infrastructure SIPs issued by the EPA Office of Air Quality Planning and Standards. However, because EPA already approved the portion of Kansas' SIP submittal relating to the interstate transport infrastructure element, section 110(a)(2)(D)(i), this proposed rulemaking does not address the interstate transport element, nor does this proposal reopen any aspect of EPA's prior action on the interstate transport element. Furthermore, this action does not address infrastructure requirements with respect to the 1997 PM<sub>2.5</sub> NAAQS or the 2006 revisions to the NAAQS. Those requirements will be addressed in future rulemaking.

**DATES:** Comments must be received on or before April 29, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2011-0304 by one of the following methods:

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

2. *E-mail:* [kramer.elizabeth@epa.gov](mailto:kramer.elizabeth@epa.gov).

3. *Mail:* Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2011-0304. 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 through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; *telephone number:* (913) 551-7186; *fax number:* (913) 551-7844; *e-mail address:* [kramer.elizabeth@epa.gov](mailto:kramer.elizabeth@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional

information by addressing the following questions:

- I. What is a section 110(a)(1) and (2) infrastructure SIP?
- II. What elements are applicable under section 110(a)(1) and (2)?
- III. What is EPA's evaluation of how the state addressed the relevant elements of section 110(a)(1) and (2)?
- IV. What action is EPA proposing?
- V. Statutory and Executive Order Reviews

### **I. What is a section 110(a)(1) and (2) infrastructure SIP?**

Section 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. These provisions require states to address basic SIP requirements including, for example, adequate provisions for emission inventory development, monitoring, and modeling to assure attainment and maintenance of the applicable standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by States within three years after promulgation of a new or revised standard. These SIPs are commonly referred to as "infrastructure" SIPs.

### **II. What elements are applicable under section 110(a)(1) and (2)?**

On October 2, 2007, EPA issued guidance to address infrastructure SIP elements required under section 110(a)(1) and (2) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS.<sup>1</sup> EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas;<sup>2</sup> (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility

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

<sup>2</sup> As discussed in further detail below, subsection 110(a)(2)(I) is not applicable for the infrastructure SIP approval process and therefore EPA will take action on the requirements of part D attainment plans separately.

protection;<sup>3</sup> (K) Air quality modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.<sup>4</sup>

### **III. What is EPA's evaluation of how the state addressed the relevant elements of section 110(a)(1) and (2)?**

On July 18, 1997, EPA promulgated new 8-hour ozone and new fine particulate matter primary and secondary NAAQS. (62 FR 38894; 62 FR 38711). On January 8, 2008, EPA Region 7 received the state of Kansas' ozone infrastructure SIP submittal. In a letter dated July 20, 2009, Kansas provided additional clarification on this submittal. EPA has reviewed the state's formal submission and the relevant statutory and regulatory authorities and provisions generally referenced in the submittal from Kansas.

As described below, today's action only pertains to the 1997 ozone standard; it does not pertain to EPA's 1997 promulgation of the PM<sub>2.5</sub> standards. In addition, it does not address issues relating to interstate transport under section 110(a)(2)(D)(i), which have already been addressed for the 1997 ozone and PM<sub>2.5</sub> NAAQS in prior rulemaking (72 FR 10608).<sup>5</sup>

Kansas' SIP submittal addresses the provisions of section 110(a)(1) and (2) as described below. EPA believes that Kansas has the adequate infrastructure needed to address all applicable elements of section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS.

(A) *Emission limits and other control measures*: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.

The state of Kansas' statutes and regulations authorize Kansas

<sup>3</sup> As discussed in further detail below, subsection 110(a)(2)(J), as it relates to visibility protection, is also not applicable for the infrastructure SIP approval process, and therefore EPA is not addressing it in today's proposed rulemaking.

<sup>4</sup> This action does not address infrastructure requirements with respect to the 1997 PM<sub>2.5</sub> NAAQS or the 2006 revisions to the NAAQS. Those requirements will be addressed in future rulemaking.

<sup>5</sup> Subsequent to this approval, updated modeling in support of the proposed Transport Rule (75 FR 45210) has indicated that emissions from Kansas interfere with maintenance of the 1997 8-hour ozone NAAQS in downwind areas. Therefore, EPA believes that the previously approved Kansas SIP may no longer adequately address these emissions. Therefore, in a separate action, EPA has proposed to find that the SIP revision approved on March 9, 2007 is substantially inadequate pursuant to section 110(a)(2)(D)(i)(I). If EPA finalizes this proposed finding, Kansas would be required to revise its SIP to correct these deficiencies. See 76 FR 763 (January 6, 2011) for more details.

Department of Health and Environment (KDHE) to regulate air quality and implement air quality control regulations. KDHE's statutory authority can be found in Chapter 65, Article 30 of the Kansas Statutes Annotated (KSA), otherwise known as the Kansas Air Quality Act. KSA Section 65–3003 places the responsibility for air quality conservation and control of air pollution with the Secretary of Health and Environment ("Secretary"). The Secretary in turn administers the Kansas Air Quality Act through the Division of Environment within KDHE. Air pollution is defined in KSA Section 65–3002(c) as the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

KSA Section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing the Kansas Air Quality Act. It also gives the Secretary the authority to establish ambient air quality standards for the state of Kansas as a whole or for any part thereof. KSA Section 65–3005(a)(12). The Secretary also has the authority to establish emission control requirements as appropriate to facilitate the accomplishment of the purposes of the Kansas Air Quality Act. KSA Section 65–3010(a).

In its letters to EPA dated January 2, 2008, and July 20, 2009, transmitting its revisions to the Kansas SIP, KDHE stated that the revised SIP specifically addressed the revised NAAQS promulgated on July 18, 1997, for ozone. This assertion is consistent with previous SIP submissions, which EPA has approved for Kansas, implementing the 1997 ozone standards.<sup>6</sup> Therefore, EPA believes ozone is an air contaminant which may be regulated under Kansas law.

EPA notes that the Kansas Air Quality Regulations provide exemptions from the emission control requirements for malfunction breakdowns or necessary repairs, under certain conditions. See,

<sup>6</sup> For example, KDHE submitted its "Kansas City Eight-Hour Ozone Maintenance Plan" to EPA on May 23, 2007, which was approved by EPA on August 9, 2007. See 72 FR 44781. This plan specifically demonstrates how KDHE will maintain the 8-hour ozone standard promulgated in 1997, consistent with the requirements of section 110(a)(1) and implementing regulations at 40 CFR 51.905(a)(4). It also contains contingency plans to ensure that any violation of the 1997 ozone standard is promptly corrected.

e.g., KAR 28–19–11. In today's proposed rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during a startup, shutdown or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions that are contrary to the Clean Air Act and existing EPA guidance,<sup>7</sup> and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

EPA also notes that the Kansas Air Quality Act contains provisions at KSA 65–3013 that give the Secretary the authority, under certain circumstances, to grant variances from rules and regulations established under the Clean Air Act.<sup>8</sup> Furthermore, the Kansas Air Quality Regulations contain provisions which allow the Secretary of KDHE to exercise his or her discretion to approve alternatives to the Kansas regulations (see, e.g., KAR 28–19–19(l)(5), which allows for data reporting procedures that vary from those in the regulation; KAR 28–19–210(a), which allows KDHE to approve alternate methods for calculating actual emissions from an emissions unit or stationary source). In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to such “variance” or “Secretary's discretion” provisions. EPA believes that a number of states have such provisions that are contrary to the Clean Air Act and existing EPA guidance,<sup>9</sup> and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a “variance” or “Secretary's (director's) discretion” provision that is contrary to the Clean Air Act and EPA guidance to take steps

<sup>7</sup> Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. “State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.” Memorandum to EPA Air Division Directors, September 20, 1999.

<sup>8</sup> The statutory variance provisions are not included in the Kansas SIP and are not recognized under federal law. In any event, a variance from an EPA-approved SIP requirement would not be recognized as a revision to the SIP unless approved by EPA under the CAA requirements for SIP revisions (see, 40 CFR 51.104(d)).

<sup>9</sup> J. Craig Potter, Assistant Administrator for Air and Radiation, Thomas L. Adams, Jr., Assistant Administrator for Enforcement and Compliance Monitoring, and Francis S. Blake, General Counsel, Office of General Counsel. “Review of State Implementation Plans and Revisions for Enforcement and Legal Sufficiency.” Memorandum, September 23, 1987. See also 52 FR 45109 (November 24, 1987).

to correct the deficiency as soon as possible.

EPA believes that Kansas has statutory and regulatory authority to establish additional emissions limitations and other measures, as necessary to address attainment and maintenance of the ozone standards. Therefore, EPA believes that the Kansas SIP adequately addresses the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

(B) *Ambient air quality monitoring/data system*: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, KSA Section 65–3007 provides the enabling authority necessary for Kansas to fulfill the requirements of section 110(a)(2)(B). This provision gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. Furthermore, the Secretary has the authority to require such air contaminant sources to monitor emissions, operating parameters, ambient impacts of any source emissions, and any other parameters deemed necessary. KSA Section 65–3007(b). The Secretary can also require these sources to keep records and make reports consistent with the Kansas Air Quality Act.

Kansas has an air quality monitoring network operated by KDHE and local air quality agencies that collects air quality data that are compiled, analyzed, and reported to EPA. KDHE's Web site contains up-to-date information about air quality monitoring, including a description of the network and information about the monitoring of ozone. See <http://www.kdheks.gov/bar/air-monitor/indexMon.html>. On February 23, 2010, EPA approved Kansas' 2009 ambient air monitoring network plan.

Within KDHE, the Bureau of Air and Radiation implements these requirements. Along with its other duties, the monitoring program collects air monitoring data, quality assures the results, and reports the data. The data are then used to develop the appropriate regulatory or outreach strategies to reduce air pollution.

KDHE submits a 5–Year Ambient Air Monitoring Network Assessment to EPA, including plans for its ozone monitoring network, as required by 40 CFR 58.10. The most recent 5-year network assessment was dated August 30, 2010. Kansas makes this plan

available for public review on KDHE's Web site. See, e.g., [http://www.kdheks.gov/bar/air-monitor/2010\\_Kansas\\_5-year\\_Monitoring\\_Network\\_Assessment.pdf](http://www.kdheks.gov/bar/air-monitor/2010_Kansas_5-year_Monitoring_Network_Assessment.pdf). This Plan includes, among other things, the locations for the ozone monitoring network. Kansas submits air quality data from this network to EPA's Air Quality System (AQS), which EPA and KDHE use to determine if the network site monitors are in compliance with the NAAQS.

Based on the foregoing, EPA believes that the Kansas SIP meets the requirements of section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

(C) *Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources)*: Section 110(a)(2)(C) requires states to include the following elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS; and (3) a permit program to meet the major source permitting requirements of the Act (including the program for areas designated as not attaining the NAAQS, and a program for the prevention of significant deterioration of air quality program in other areas). Note that all areas of Kansas are currently in attainment with the NAAQS. In addition, as discussed in further detail below, this proposed infrastructure SIP rulemaking will not address the Kansas program for nonattainment area-related provisions, since those are not applicable for the infrastructure SIP approval process.

(1) With respect to enforcement of requirements of the SIP, KSA Section 65–3005(a)(3) gives the Secretary the authority to issue orders, permits and approvals as may be necessary to effectuate the purposes of the Kansas Air Quality Act and enforce the Act by all appropriate administrative and judicial proceedings. Pursuant to KSA Section 65–3006, the Secretary also has the authority to publish and enforce rules, regulations and standards to implement the Act and to employ the professional, technical or other staff to effectuate the provisions of the Act. In addition, if the Secretary or the director of the Division of Environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of the Act or any rule or regulation promulgated under the Act, he or she may issue an order directing the person to take such action as necessary to

correct the violation. KSA Section 65–3011.

KSA Section 65–3018 gives the Secretary the authority to impose a monetary penalty against any person who either violates any order or permit issued under the Kansas Air Quality Act, or violates any provision of the Act or rule or regulation promulgated thereunder. Section 65–3019 provides for criminal penalties for knowing violations.

(2) Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. Kansas has a program under KAR 28–19–300 that requires sources (which meet certain criteria listed in KAR 28–19–300(a)) to first obtain a construction permit from KDHE. The permitting process is designed to ensure, among other things, that new and modified sources will not interfere with NAAQS attainment. If KDHE determines that emissions from a constructed or modified source will interfere with attainment or maintenance of the NAAQS, it cannot issue the permit. See KAR 28–19–301(d).

Kansas also requires preconstruction permits for a second category of smaller sources that meet the criteria listed in KAR 28–19–300(b). Prior to commencing construction or modification, these sources must obtain an approval from KDHE. Again, if KDHE determines that emissions from a constructed or modified source will interfere with attainment or maintenance of the NAAQS, it cannot issue the approval.

The Kansas regulations give KDHE the authority to condition the permit or approval upon compliance by the owner or operator with any special restrictions that are deemed necessary to insure compliance with the Kansas Air Quality regulations or to otherwise prevent air pollution. KAR 28–19–301(e).

EPA has determined that Kansas' minor new source review (NSR) program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors. EPA has also determined that certain provisions of the state's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act likely do not meet all the requirements found in EPA's regulations implementing that provision. See 40 CFR 51.160–51.164. EPA previously approved Kansas' minor NSR program into the SIP, and at the time there was no objection to the provisions of this program. See, 40 FR 15879 (April 8, 1975) and 60 FR 36361 (July 17, 1995). Since then, the state and

EPA have relied on the existing state minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Kansas' infrastructure SIP for ozone with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

(3) Kansas also has a program approved by EPA which meets the requirements of Part C, relating to prevention of significant deterioration of air quality. Kansas' implementing rule, KAR 28–19–350, incorporates the relevant portions of the federal rule, 40 CFR 52.21 (as of July 1, 2007), by reference, including the relevant portions of EPA's "NSR reform" rule promulgated by EPA on December 31, 2002. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR reform requirements. EPA will act on NSR reform submittals through a separate rulemaking process. For Kansas, we have previously approved the relevant portions of Kansas' NSR reform rules for attainment areas, and as previously stated, Kansas currently has no nonattainment areas. See 72 FR 29429 (May 29, 2007).

The Kansas SIP also contains a permitting program for major sources and modifications in nonattainment areas (see KAR 28–19–16). This section is currently not applicable to Kansas because all areas of Kansas are currently in attainment with the NAAQS. Even if

it were applicable, the SIP's discussion of nonattainment areas is not addressed in this rulemaking (see discussion of the section 110(a)(2)(I) requirements for nonattainment areas, below).

With respect to the PSD program, EPA notes that the Kansas SIP provides that ozone precursors (volatile organic compounds (VOCs) and nitrogen oxides) are regulated. For example, a stationary source that is major for VOCs is also major for ozone for purposes of permitting in nonattainment areas. KAR 28–19–16a(r). In addition, a source that undergoes a significant net emissions increase for VOCs is also considered to have undergone a significant net emissions increase for ozone for the purposes of the Kansas air quality regulations. KAR 28–19–200(eee)(6). EPA also notes that KAR 28–19–350 incorporates 40 CFR 52.21(b) as of 2007 by reference. The regulations at 40 CFR 52.21(b)(50) specifically state that nitrogen oxides and VOCs are considered precursors for ozone.

In further support of EPA's proposed determination regarding the state's authority to apply its PSD program to the 1997 ozone standard, EPA notes that KAR 28–19–350 also incorporates by reference the requirements of 40 CFR 52.21(k)(1). This provision requires that a permit applicant demonstrate that allowable emissions increases from a new source or modification will not cause or contribute to air pollution in violation of "[a]ny national ambient air quality standard." EPA believes that this provision is sufficiently open-ended to authorize KDHE to implement any NAAQS upon promulgation by EPA. This view is consistent with KDHE's assertion that it has adequate authority to meet all of the requirements of section 110(a)(2) with respect to the 1997 ozone standard (which includes implementation of the PSD program with respect to that standard).

Finally, we note that on February 22, 2011, in a separate rulemaking, EPA approved the state of Kansas' revisions to its SIP to regulate GHGs under the Kansas New Source Review Prevention of Significant Deterioration program. 76 FR 9658. Thus, we have previously determined that the Kansas SIP meets the PSD requirements with respect to GHGs.

On the basis of the foregoing, EPA believes that the Kansas SIP and underlying statutory authority are adequate to meet the requirements of section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

(D) *Interstate and international transport*: Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of

emissions activity in one state from contributing significantly to nonattainment in, or interfering with maintenance by, another state with respect to the NAAQS, or from interfering with measures required in another state to prevent significant deterioration of air quality or to protect visibility.

Kansas addressed the provisions of section 110(a)(2)(D)(i), as it relates to the 1997 ozone and PM standards, in a prior SIP submission. EPA approved the portion of the Kansas SIP submittal relating to section 110(a)(2)(D)(i), on March 9, 2007 (72 FR 10608).<sup>10</sup> Therefore, the proposed action addressed in this notice does not include the interstate transport elements, nor does this rulemaking reopen any aspect of EPA's prior action on the transport elements for Kansas for the 1997 standards.

Section 110(a)(2)(D)(ii) requires that the SIP insure compliance with the applicable requirements of sections 126 and 115, relating to interstate and international pollution abatement.

Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Although Kansas sources have not been identified by EPA as having any interstate or international impacts under section 126 or section 115 in any pending actions relating to the 1997 ozone standards, the Kansas regulations address abatement of the effects of interstate pollution. For example, KAR 28–19–350(k)(2) requires KDHE, prior to issuing any construction permit for a proposed new major source or major modification, to notify EPA, as well as: Any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located; the chief executives of the city and county where the source will be located; any comprehensive regional land use planning agency having jurisdiction where the source will be located; and any state, Federal land manager, or Indian governing body whose lands will be affected by emissions from the new source or modification. (KAR 28–19–16k(b) provides similar requirements for construction permits issued in nonattainment areas.) Finally, we believe that Kansas could use the same statutory authorities previously discussed, primarily KSA 65–3005(a), to respond to any future findings with respect to the 1997 ozone standards.

Based on the foregoing, EPA believes that Kansas has the adequate

infrastructure needed to address section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

*(E) Adequate authority, resources, implementation, and oversight:* Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the Act; and (3) necessary assurances that the state has responsibility for implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) With respect to adequate authority, we have previously discussed Kansas' authority to implement the SIP for the 1997 ozone standards, primarily in the discussion of section 110(a)(2)(A). Neither Kansas nor EPA has identified any legal impediments to implementation of those standards.

With respect to adequate resources, KDHE asserts that it has adequate personnel to implement the SIP. The Kansas statutes provide the Secretary the authority to employ technical, professional and other staff to effectuate the purposes of the Kansas Air Quality Act from funds appropriated and available for this purpose. See KSA Section 65–3006(b). Within KDHE, the Bureau of Air and Radiation implements the Kansas Air Quality Act. This Bureau is further divided into the Air Compliance & Enforcement Section, Air Operating Permit & Construction Section; the Monitoring & Planning Section; and the Radiation, Asbestos & Right to Know Section.

With respect to funding, the Kansas Legislature annually approves funding and personnel resources for KDHE to carry out the air program. The annual budget process provides a periodic update that enables KDHE and the local agencies to adjust funding and personnel needs. In addition, the Kansas statutes grant the Secretary authority to establish various fees for sources, to cover any and all parts of administering the provisions of the Kansas Air Quality Act. For example, KSA Section 65–3008(f) allows the Secretary to fix, charge, and collect fees for construction approvals and permits (and the renewals thereof). KSA Section 65–3024 grants the Secretary the authority to establish annual emissions fees. Fees from the construction permits and

approvals are deposited into the Kansas state treasury, while emissions fees are deposited into an air quality fee fund. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas also uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the Act, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.

(2) Conflict of interest provisions—Section 128

Section 110(a)(2)(E) also provides that the state must meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. We note that this particular provision is not related to promulgation or revision of any NAAQS, and we have not determined that Kansas must show specifically that it meets this requirement with respect to the ozone infrastructure SIP for the 1997 standards. However, the following discussion shows how Kansas generally meets the requirements of Section 128.

Section 128 requires that a SIP-implementing body which approves permits or enforcement orders under the Act must have at least a majority of members who represent the public interest and do not derive a "significant portion" of income from entities or individuals subject to permits and enforcement orders under the Act. In addition, section 128 requires that members of such a body or the agency head with similar authorities adequately disclose any potential conflicts of interest.

Chapter 46, Article 2 (State Governmental Ethics) of the KSA specifies ethics requirements for all state officers and employees, including members of KDHE's Bureau of Air and Radiation. These requirements address the requirements contained in section 128 of the CAA. For instance, KSA Section 46–235 states that no state officer or employee shall accept compensation for performance of official duties, other than that to which such person is entitled for such performance. KSA Section 46–236 states that no state officer or employee shall solicit any economic opportunity, gift, favor, service, etc. from any person known to have a special interest in influencing the performance of the official duties of such officer or employee. KSA Section 46–248 requires that state officers (such as the

<sup>10</sup> See footnote 5.

Secretary), employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency must file "statements of substantial interest," disclosing the nature of any financial interest(s) he or she may have.

(3) With respect to assurances that the state has responsibility to implement the SIP when it authorizes local or other agencies to carry out portions of the plan, KSA Section 65–3005(a)(8) gives the Secretary the authority to encourage local units of government to handle air pollution problems within their own jurisdictions and to provide technical and consultative assistance therefor. The Secretary may enter into agreements with local units of government to administer all or part of the provisions of the Kansas Air Quality Act in the units' respective jurisdictions. In fact, KSA Section 65–3016 allows for cities and/or counties (or combinations thereof) to form local air quality conservation authorities which will then have the authority to enforce air quality rules and regulations adopted by the Secretary and adopt any additional rules, regulations and standards as needed to maintain satisfactory air quality within their jurisdictions.

However, the Kansas statutes also retain authority in the Secretary to carry out the provisions of state air pollution control law. KSA Section 65–3003 specifically places responsibility for air quality conservation and control of air pollution with the Secretary. The Secretary shall then administer the Kansas Air Quality Act through the Division of Environment. As an example of this retention of authority, KSA Section 65–3016 only allows for the formation of local air quality conservation authorities with the approval of the Secretary. In addition, although these authorities can adopt additional air quality rules, regulations and standards, they may only do so if those rules, regulations and standards are in compliance with those set by the Secretary. Currently, KDHE oversees the following local agencies that implement that Kansas Air Quality Act: The City of Wichita Department of Environmental Services, Johnson County Environmental Department, Shawnee County Health Agency, and Unified Government of Wyandotte County, Kansas City-Kansas Health Department.

Based on the foregoing, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS.

(F) *Stationary source monitoring system:* Section 110(a)(2)(F) requires

states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. That section also requires that the state correlate the source reports with emission limitations or standards established under the Act and make reports available for public inspection.

To address this element, KSA Section 65–3007 gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. The Secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions, and any other parameters deemed necessary. Furthermore, the Secretary may require these emissions sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act.

In addition, KAR 28–19–12(A) states that KDHE may make any person responsible for the operation of an emissions source to make or have tests made to determine the rate of contaminant emissions from the source whenever it has reason to believe that existing emissions exceed limitations. At the same time, KDHE may also conduct its own tests of emissions from any source. The Kansas regulations also require that all Class I operating permits include requirements for monitoring of emissions. See KAR 28–19–512(a)(9).

Kansas makes all monitoring reports (as well as compliance plans and compliance certifications) submitted as part of Class I or Class II permit application publicly available. See KSA Section 65–3015(a); KAR 28–19–204(c)(6). KDHE maintains a database with emissions data for more than 900 stationary source facilities in Kansas. See <http://www.kdheks.gov/emission/data.html>. KDHE uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Although the Kansas statutes allow a person to request that some information that is reported to KDHE be regarded and treated as confidential on the grounds that it constitutes trade secrets, emissions data is specifically excluded from this protection. See KSA Section 65–3015(b).

EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

(G) *Emergency authority:* Section 110(a)(2)(G) requires states to provide for authority to address activities

causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in Section 303 of the Act), including contingency plans to implement the emergency authorities.

KSA Section 65–3012(a) states that whenever the Secretary receives evidence that emissions from an air pollution source or combination of sources presents an imminent and substantial endangerment to public health or welfare or to the environment, he or she may issue a temporary order directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice. The Secretary may then follow this up by commencing an action in the district court to enjoin these acts or practices.

KAR 28–19–56 allows the director of the division of environment to proclaim an air pollution alert, air pollution warning, or air pollution emergency whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. KAR 28–19–57 imposes restrictions that apply to emission sources in the event one of these three air pollution episode statuses is declared. Any person responsible for the operation of a source of air contamination adjudged to be of major concern with respect to the possible implementation of air pollution emergency episode control procedures either because of the nature or the quantity of its emissions must, at the request of KDHE, prepare an emergency episode plan to be implemented in the event that such an episode is declared. KAR 28–19–58.

EPA believes that the Kansas SIP adequately addresses section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

(H) *Future SIP revisions:* Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

KSA Section 65–3005(b) specifically states that it is the policy of the state of Kansas to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with that of the Federal government. Therefore, the Secretary has the authority to promulgate rules and regulations to ensure that Kansas is and remains in compliance with the

provisions of the Federal CAA. KSA Section 65–3005(b)(1).

As discussed previously, KSA Section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing the Kansas Air Quality Act. The Secretary also has the authority to establish ambient air quality standards for the state of Kansas. KSA Section 65–3005(a)(12). Therefore, as a whole, the Secretary has the authority to revise rules as necessary to respond to any necessary changes in the NAAQS.

EPA believes that Kansas has the adequate authority to address section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

(I) *Nonattainment areas:* Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of Part D of the Act, relating to SIP requirements for designated nonattainment areas.

This section is currently not applicable to Kansas because all areas of Kansas are currently in attainment with the NAAQS. Kansas previously had one ozone nonattainment area in the Kansas portion of the Kansas City metropolitan area; however, it was later redesignated as being in attainment. Nevertheless, EPA notes that the Kansas regulations have provisions in place which address construction or modification of sources in nonattainment areas, and that it has regulations in place for control of VOC emissions in the former nonattainment area. See KAR Section 28–19–16 through 28–19–16m, and KAR 28–19–61 through 28–19–77. These regulations are contained in the Federally approved SIP.

EPA has not addressed section 110(a)(2)(I) in its recent infrastructure SIP guidance because Part D SIPs are due on a different schedule than the infrastructure SIP submittal schedule. (See, e.g., the infrastructure SIP guidance for the revised lead standard, 73 FR 67034, n. 113, Nov. 12, 2008, and the infrastructure SIP guidance for the revised NO<sub>2</sub> standards, 75 FR 6523, n. 27, Feb. 9, 2010.) Therefore, this proposal does not address section 110(a)(2)(I). EPA will take action on any part D nonattainment plans through a separate rulemaking.

(J) *Consultation with government officials, Public Notification, PSD and visibility protection:* Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of

NAAQS exceedances and related issues; and (3) Part C of the Act, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, KSA Section 65–3005(14) gives the Secretary the authority to advise, consult and cooperate with other agencies of the state, local governments, other states, interstate and interlocal agencies, and the Federal government. In addition, and as an example, the Kansas regulations require that KDHE consult with other agencies—such as the Kansas Department of Transportation, Wyandotte County (KS) Health Department, Johnson County (KS) Environmental Department Missouri Department of Natural Resources, Missouri Department of Transportation, the Federal Highway Administration of the U.S. Department of Transportation, among others—for all matters pertaining to transportation conformity determinations. KAR 28–19–801(d).<sup>11</sup> Furthermore, as noted in the discussion on section 110(a)(2)(D), Kansas' regulations require that whenever it receives a construction permit application for a new source or a modification, KDHE must notify state and local air pollution control agencies, as well as regional land use planning agencies and any state, Federal, or Indian land managers whose lands will be affected by emissions from the new source or modification. See KAR 28–19–350(k)(2).

(2) With respect to the requirements for public notification in CAA section 127, KAR 28–19–56 contains provisions that allow the director of the division of environment to proclaim an air pollution alert, air pollution warning, or air pollution emergency status whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. If this occurs, public notification will occur through local weather bureaus. However, any of these emergency situations can be declared even in the absence of issuance of a high air pollution potential advisory or equivalent advisory from a local weather bureau meteorologist, if deemed necessary to protect the public health.

In addition, information regarding air pollution and related issues, is provided on a KDHE Web site, <http://www.kdheks.gov/bar/>. KDHE also prepares an annual report on air quality

<sup>11</sup> We note, however, that Kansas does not currently have any areas in the state subject to transportation conformity.

in the state which is available to the public on its Web site, at <http://www.kdheks.gov/bar/air-monitor/index.html>. This link also provides information regarding the NAAQS, air pollution sources, and health effects of poor air quality, as well as access to live monitoring data.

(3) With respect to the applicable requirements of Part C, relating to prevention of significant deterioration of air quality and visibility protection, we previously noted in the discussion of section 110(a)(2)(C) (relating to enforcement of control measures) how the Kansas SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), we reiterate the statutory requirement providing, in relevant part, that each plan must meet the “applicable requirements” of Part C (of Title I of the Act) relating to visibility protection. We note that the other Part C requirements specified in section 110(a)(2)(J) (applicable requirements relating to prevention of significant deterioration of air quality), specifically relate to the 1997 and 2006 NAAQS (as well as other pollutants regulated under the CAA), and a state must be able to implement those requirements with respect to a new or revised NAAQS when promulgated. In contrast to the PSD program, the visibility protection requirements are not directly related to the promulgation of, or revision to, a NAAQS. While the SIP must independently meet the visibility protection requirements of Part C by virtue of the specific SIP requirements in sections 169A and 169B of the Act, EPA believes that the visibility protection requirements are not “applicable requirements” within the meaning of section 110(a)(2)(J) and that the infrastructure SIP is not required to be revised with respect to visibility protection merely due to promulgation of, or revision to, these 1997 ozone NAAQS.

For the reasons stated above, EPA believes that Kansas has met the applicable requirements of section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS in the state.

(K) *Air quality and modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict effects on ambient air quality of emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Kansas has authority to conduct air quality modeling and report the results of such modeling to EPA. KSA Section 65–3005(a)(9) gives the Secretary the

authority to encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, the regulations at KAR 28–19–350 incorporate the EPA modeling guidance in 40 CFR Part 51, App. W for the purposes of demonstrating compliance or non-compliance with an NAAQS.

The Kansas statutes and regulations also give KDHE the authority to require that modeling data be submitted for analysis. KSA Section 65–3007(b) gives the Secretary the authority to require air contaminant emission sources to monitor emissions, operating parameters ambient impact of any source emissions or any other parameters deemed necessary. The Secretary may also require these sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act. These reports could include information as may be required concerning the location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such information as is relevant to air pollution and available or reasonably capable of being assembled. KSA Section 65–3007(c).

EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

*(L) Permitting Fees:* Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority to cover the cost of reviewing, approving, implementing and enforcing a permit. That section provides that the fee requirement applies until a fee program established by the state pursuant to Title V of the Act, relating to operating permits, is approved by EPA.

KSA Section 65–3008(f) allows the Secretary to fix, charge, and collect fees for construction approvals and permits (and the renewals thereof). KSA Section 65–3024 grants the Secretary the authority to establish annual emissions fees. Fees from the construction permits and approvals are deposited into the Kansas state treasury, while emissions fees are deposited into an air quality fee fund. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas' Title V program, found at KAR 28–19–500 to 28–19–564, including the fee program addressing

the requirements of the Act and 40 CFR 70.9 relating to Title V fees, was approved by EPA on January 30, 1996 (61 FR 2938). Therefore, EPA believes that the requirements of section 110(a)(2)(L) are met.

*(M) Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

KSA Section 65–3005(a)(8)(A) gives the Secretary the authority to encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefore. The Secretary may also enter into agreements with local units of government to administer all or part of the provisions on the Kansas Air Quality Act in the units' respective jurisdiction. The Secretary also has the authority to advise, consult, and cooperate with local governments. KSA Section 65–3005(a)(14). He or she may enter into contracts and agreements with local governments as is necessary to accomplish the goals of the Kansas Air Quality Act. KSA Section 65–3005(a)(16).

Currently, KDHE's Bureau of Air and Radiation has signed State and/or Local Agreements with the Department of Air Quality from the Unified Government of Wyandotte County—Kansas City, Kansas; the Wichita Department of Environmental Services; the Shawnee County Health Department, the Johnson County Environmental Department; and the Mid-America Regional Council. These agreements establish formal partnerships between the Bureau of Air and Radiation and these local agencies to work together to develop and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.

In addition, as previously noted in the discussion about section 110(a)(2)(J), Kansas' statutes and regulations require that KDHE consult with local political subdivisions for the purposes of carrying out its air pollution control responsibilities.

Therefore, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

#### IV. What action is EPA proposing?

EPA proposes to approve the State Implementation Plan (SIP) submittal from the state of Kansas which addresses the requirements of Clean Air Act section 110(a)(2) for the 1997 revisions to the National Ambient Air

Quality Standards (NAAQS) for ozone. As described above, EPA believes that Kansas has the required infrastructure to address all elements of section 110(a)(2) to ensure that the revised ozone standards are implemented in the state.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

#### 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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



methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### Statutory Authority

The statutory authority for this action is provided by Section 110 of the CAA, as amended (42 U.S.C. 7410).

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 23, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011-7467 Filed 3-29-11; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0014; FRL-8867-2]

### 40 CFR Parts 156 and 170

#### Receipt of Request To Require Pesticide Products To Be Labeled in English and Spanish

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

**ACTION:** Notice of receipt of petition and request for comment.

**SUMMARY:** This notice is to advise the public that the Migrant Clinicians Network and other farm worker interest groups have petitioned EPA to require all pesticide labels be available in both English and Spanish. The Agency is taking public comment on the request before responding to the petitioners.

**DATES:** Comments must be received on or before June 28, 2011.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0014, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2011-0014. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4

p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Katie Weyrauch, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-0166; e-mail address: [weyrauch.katie@epa.gov](mailto:weyrauch.katie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including human health, farm worker, agricultural and environmental advocacy groups; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- iii. Explain fully why you agree or disagree; suggest alternatives and