

additional requirements. 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 the 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–12063 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0809; FRL–9307–6]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submission from the State of Colorado to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the “infrastructure elements” of section 110(a)(2). The State of Colorado submitted a certification of their infrastructure SIP for the 1997 ozone NAAQS, dated January 7, 2008 which was determined to be complete on March 27, 2008 (73 FR 16205).

EPA does not propose to act on the State’s January 7, 2008 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State’s interstate transport SIP submission at 75 FR 31306, 75 FR 71029, and 76 FR 22036.

DATES: Written comments must be received on or before June 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0809, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* dolan.kathy@epa.gov.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver,

Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0809. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

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

Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, dolan.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through <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 on 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:

Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);

Follow directions and organize your comments;

Explain why you agree or disagree;

Suggest alternatives and substitute language for your requested changes;

Describe any assumptions and provide any technical information and/or data that you used;

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

Provide specific examples to illustrate your concerns, and suggest alternatives;

Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements,

states need only to certify that fact via a letter to EPA.¹

On March 27, 2008, EPA published a final rule entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS” (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Colorado had submitted a complete SIP to meet these requirements.

III. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories, that are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
 - 110(a)(2)(B): Ambient air quality monitoring/data system.
 - 110(a)(2)(C): Program for enforcement of control measures.
 - 110(a)(2)(D)(ii): Interstate and international pollution.
 - 110(a)(2)(E): Adequate resources and authority.
 - 110(a)(2)(F): Stationary source monitoring and reporting.
 - 110(a)(2)(G): Emergency powers.
 - 110(a)(2)(H): Future SIP revisions.
 - 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
 - 110(a)(2)(K): Air quality modeling/data.
 - 110(a)(2)(L): Permitting fees.
 - 110(a)(2)(M): Consultation/participation by affected local entities.
- A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section

¹ Memorandum from William T. Harnett, Director, Air Quality Policy Division, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (Oct. 2, 2007).

110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the “interstate transport” requirements of element 110(a)(2)(D)(i). EPA approved portions of the State’s 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate actions (75 FR 31306; 75 FR 71029; 76 FR 22036), and has proposed approval of the remaining portion to meet the requirement of 110(a)(2)(D)(i) regarding interference with measures to prevent significant deterioration (76 FR 21835).

IV. How did Colorado address the infrastructure elements of sections 110(a)(1) and (2)?

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. *Colorado’s response to this requirement:* Enforceable emission limits and control measures are detailed in the various Colorado Air Quality Control Commission (AQCC) regulations for all sources of criteria pollutants as well as hazardous air pollutants, volatile organic compounds (VOCs), chlorofluorocarbons (CFCs), smoke and odors. A summary of the regulations is found below under section 110(a)(2)(C).

b. *EPA analysis:* Colorado’s SIP meets the requirements of CAA Section 110(a)(2)(A), subject to the following clarifications. First, EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D

requirements in its certification for the infrastructure requirements of section 110(a)(1) and (2). For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Colorado cited to rules in Regulation Number 7 that were submitted to meet the reasonably available control technology (RACT) requirements of part D. EPA is here approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State’s obligation to impose RACT under part D was or will be made separately, in an action reviewing those rules pursuant to the requirements of part D.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director’s discretion or variance provisions. A number of States have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any State having a director’s discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance² 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.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of

appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. *Colorado’s response to this requirement:* The provisions for episodic monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP which was approved by EPA on 7/9/80 (45 FR 46073) and 8/11/80 (45 FR 53147). The State has since revised the monitoring SIP to include all new federal requirements. The revised SIP includes a commitment to operate a particulate monitoring network in accordance with EPA regulations (40 CFR Part 58.20 and Appendices A through G). The AQCC adopted monitoring SIP revisions on 3/18/93. The Colorado Air Pollution Control Division periodically submits a Quality Management Plan and a Quality Assurance Project Plan to EPA Region 8. These plans cover procedures to monitor, analyze, and report data to an EPA central database. As such the State of Colorado has an approved monitoring SIP, a plan and authority for monitoring, and the ability to properly handle all related data.

b. *EPA analysis:* Colorado’s air monitoring programs and data systems meet the requirements of CAA Section 110(a)(2)(B) for the 1997 ozone NAAQS. The Colorado 2010 Annual Monitoring Network Plan (AMNP) was approved by EPA Region 8 on August 26, 2010.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *Colorado’s response to this requirement:* Colorado has an approved SIP regulating the construction and modification of stationary sources as necessary to assure that the NAAQS are achieved (Colorado Air Quality Control Commission Regulation 3), including a permit program as required in Parts C and D of the federal CAA. Colorado has an approved SIP which provides for the enforcement of the control measures required by CAA Section 110(a)(2)(C).

Many of the Colorado AQCC Regulations address in some manner the programs for enforcement of control measures. Some of these AQCC regulations and other relevant Colorado-

² Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, “State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.” (Sept. 20, 1999).

specific programs that are in the SIP are described below:

- Regulation 1, “Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides”—Regulation 1 sets forth emissions limitations, equipment requirements, and work practices (abatement and control measures) intended to control the emissions of particulates, smoke and sulfur oxides from new and existing stationary sources. Control measures specified in this regulation are designed to limit emissions into the atmosphere and thereby minimize the ambient concentrations of particulates and sulfur dioxides.

- Regulation 3, “Air Pollution Emission Notices—Permits”—Regulation 3 provides for a procedural permitting program and requires air pollution sources to file Air Pollution Emission Notices (APENs). The regulation also requires that new or modified sources of air pollution with certain exemptions-obtain preconstruction permits.

- Regulation 4, “Woodburning Controls”—Regulation 4 requires new stove and fireplace inserts meet the federal certification requirements in specified areas of Colorado.

- Regulation 7, “Volatile Organic Compounds Control”—Regulation 7 controls the emissions of volatile organic compounds, primarily in the Denver-metro area. It sets standards and mandates controls for specific types of volatile organic compound sources.

- Regulation 10, “Transportation Conformity”—Regulation 10 defines the criteria the Colorado Air Quality Control Commission uses to evaluate the consistency between state air quality standards/objectives, and transportation planning and major construction activities across the State, as defined in state implementation plans.

- Regulation 11, “Motor Vehicle Inspection”—Regulation 11 requires automobile emission inspection and maintenance programs to be implemented in specified areas of the State for gasoline-powered on-road vehicles. These programs apply to businesses, industry, and the general public. In addition, the State’s Automobile Inspection and Readjustment (AIR) program’s purpose is to reduce motor vehicle-related pollution through the inspection and emissions-related repair of automobiles. The program, as defined in Regulation 11, works in specific areas of the State and requires motor vehicles to meet emission standards through periodic maintenance and/or repair.

- Regulation 13, “Oxygenated Fuels”—Regulation 13 addresses the

issue of motor vehicle related pollution and requires the use of oxygenated fuels in gasoline-powered motor vehicles in Colorado’s Automobile Inspection and Readjustment program.

- Regulation 16, “Street Sanding and Sweeping”—Regulation 16 sets specification standards for street sanding material and street sweeping practices in the Automobile Inspection and Readjustment program area and Denver-metro particulate attainment/maintenance area.

b. *EPA analysis:* To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved prevention of significant deterioration (PSD), nonattainment New Source Review (NSR), and minor NSR permitting programs adequate to implement the 1997 8-hour ozone NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. Also, in this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements. EPA will act on SIP submittals that are made for purposes of addressing NSR Reform through a separate rulemaking process. In this action, EPA is evaluating the State’s PSD program as required by part C of the Act, and the State’s minor NSR program as required by 110(a)(2)(C).

Colorado has a SIP-approved PSD program that meets the general requirements of part C of the Act (51 FR 31125). Below, EPA considers requirements for the PSD program specific to the 1997 ozone NAAQS, but first considers the effects of recent rules regulating greenhouse gases on Colorado’s PSD program.

Greenhouse Gas Regulation

EPA notes a potential inconsistency between Colorado’s January 7, 2008 infrastructure SIP certification and EPA’s recently promulgated rule, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans” (“PSD SIP Narrowing Rule”), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Colorado’s PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA’s June 3, 2010 “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (“Tailoring Rule”), 75 FR 31514. EPA withdrew its approval on the basis that the State

lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Colorado’s PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its January 7, 2008 certification, Colorado relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA’s basis for the PSD SIP Narrowing Rule, EPA proposes approval of the Colorado infrastructure SIP for infrastructure element (C) if either the State clarifies (or modifies) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. In the alternative, if Colorado does not take either action, EPA proposes to disapprove the infrastructure SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for Colorado to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).

Regulation of Ozone Precursors

In order for the State’s SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO_x) as a precursor for ozone (72 FR 71612). On August 1, 2007, the State submitted to EPA revisions to AQCC Regulation No. 3, Part D (PSD) which incorporate EPA’s Phase 2 Rule. On April 19, 2011, EPA proposed approval of the portions of the August 1, 2007 revisions which adopt language treating NO_x as a precursor for ozone (76 FR 21835). We

anticipate finalizing the approval of the portions in the April 19, 2011 proposal that satisfy the requirements of the Phase 2 Rule before finalizing approval of Colorado's infrastructure SIP. Contingent on that approval, Colorado's PSD program meets the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS.

Minor New Source Review

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, which regulates emissions of ozone and its precursors. On April 30, 1981, EPA approved the State's minor NSR program for incorporation into the SIP, and there was at the time no objection to the provisions of this program (46 FR 24180). Since then, the State and EPA have relied on the approved 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 Colorado's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA 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. 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 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.

4. *Interstate transport:* Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with

maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. *Colorado's response to this requirement:* An Interstate Transport SIP revision was approved by the AQCC on February 15, 2007 that demonstrates pollutants from Colorado, including ozone and PM_{2.5}, do not contribute to a NAAQS problem in neighboring states. The SIP revision utilized both monitoring data and modeling to show that neither ozone nor particulate matter originating in Colorado contributes to NAAQS problems outside of Colorado. The SIP revision will be forwarded to EPA after review and approval from the Colorado Legislature and the Governor's Office.

Specific issues of interstate transport are addressed within Colorado Regulation 3, "Air Pollution Emission Notices." Regulation 3, Part B, Section IV.C.4 requires the Colorado Air Pollution Control Division to notify any state that may be affected by emissions from that source or from a modification to that source as related to the prevention of significant deterioration. Colorado also has a regulation requiring installation of Best Achievable Retrofit Technology (BART) on stationary sources if visibility impairment in any Class I Area is reasonably attributed to such stationary source (Colorado Air Quality Control Commission Regulation 3, Part B.XI.D).

The AQCC has a directive regarding interstate transport of pollutants that prohibits Colorado sources from causing a violation of the NAAQS in a neighboring state with reciprocal provisions as found in the AQCC Common Provisions, Part 2, Section A (5CCR 1001-2).

b. *EPA Analysis:* Colorado did not submit its interstate transport SIP to meet the requirements of section 110(a)(2)(D)(i) with the January 7, 2008 Infrastructure SIP. Colorado has since submitted an interstate transport SIP and revisions to EPA for the 1997 ozone NAAQS. EPA approved portions of the State's 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate actions (75 FR 31306; 75 FR 71029; 76 FR 22036), and has proposed approval of the remaining portion to meet the requirement of 110(a)(2)(D)(i)(II) regarding interference with measures to prevent significant deterioration (76 FR 21835). EPA is

taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. *Interstate and international transport provisions:* Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. *Colorado's response to this requirement:* Colorado did not specifically address this requirement, but rather addressed 110(a)(2)(D) as a whole. See Colorado's response to requirement 110(a)(2)(D)(i), in particular the State's citation of Regulation 3, Part B, Section IV.C.4.

b. *EPA Analysis:* Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

Colorado meets the requirement of section 126(a) through AQCC Regulation No. 3 Part B, Section IV.C.4. This provision requires notification to states whose lands may be affected by the construction or modification of a stationary source. In addition to satisfying the requirements of 40 CFR 51.166(q)(2)(iv), the provision meets the requirements of section 126(a). Final approval of the AQCC Regulation No. 3 Part B, Section IV.C.4 became effective February 20, 1997 (62 FR 2910).³

Colorado has no pending obligations under sections 126(c) or 115(b); therefore, Colorado's SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. *Adequate resources and authority:* Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

³ Colorado has since renumbered AQCC Regulation Number 3, Part B.

a. *Colorado's response to this requirement:*

Personnel, Funding, and Authority

There are no state or federal provisions prohibiting the implementation of any provision of the Colorado SIP. In general, Colorado provides the necessary assurances that funding, personnel, and authority exist and that the State of Colorado has responsibility for implementing local provisions. All of the regulatory provisions in the SIP were adopted by the AQCC pursuant to authority delegated to it by statute. The AQCC's general authority to adopt the rules and regulations necessary to implement the SIP is set out in the Colorado Air Pollution Prevention and Control Act Section 25-7-105 of the Colorado Revised Statutes (C.R.S.). The general authority for the Air Pollution Control Division to administer and enforce the program is set out at 25-7-111, C.R.S. Additional authority to regulate air pollution and implement provisions in the SIP is set out elsewhere in the Colorado Air Pollution Prevention and Control Act, Article 7 of Title 25. In addition, the AQCC and the Division have the authority delegated to them in Sections 42-4-301 to 42-4-316, C.R.S. (concerning motor vehicle emissions) and 42-4-414 (concerning emissions from diesel-powered vehicles).

The AQCC's authority includes the authority to regulate particulate emissions, regardless of size (C.R.S. Section 25-7-109 (2)(b)).

The Colorado Air Pollution Control Division has staff and an annual budget to operate its six programs (Stationary Sources, Mobile Sources, Indoor Air, Technical Services, Planning and Policy, Administrative Services). The Division employs 154 people and has a budget of \$16.5 million for fiscal year 2006-2007.

Of the total budget, 21 percent was derived from federal grants, 38 percent from mobile source fees, and 41 percent from stationary source fees.

State Boards

Section 128 of the CAA indicates Colorado's SIP must contain requirements that anybody that approves permits or enforcement orders under the CAA must have a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders.

The Commission's Air Quality Commission Procedural Rules section 1.11.0 state that "The Commission shall have at least a majority of members who

represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission."

Relationships With Other Agencies Responsible for Carrying Out State Activities

The Colorado Air Pollution Control Division contracts with local governments in two distinct ways:

1. Colorado grants monies to local health departments to endow them as agents of the State to provide inspections of some local stationary sources, asbestos abatement jobs, and CFC sources. Some local health departments also operate gaseous and particulate monitors under contract for the state. These efforts must comply with federal and state regulations.

2. Colorado grants monies to local governments to help pay for their support of SIP elements via public and private partnerships, education and informational campaigns. Most of these agencies create their own work plan that consists of programs they feel will help enhance air quality in their communities in accordance with general SIP directives.

Colorado has adopted specific regulations for local attainment/maintenance areas to assure these areas meet requirements of the SIP. These regulations include The Colorado Air Quality Control Commission SIP-specific regulations, 5 CCR 1001-20. These regulations provide the necessary authority for the Colorado Air Pollution Control Division to adequately enforce the provisions of the SIP elements in local attainment/maintenance areas.

b. *EPA Analysis:* Colorado's SIP meets the requirements of section 110(a)(2)(E) for the 1997 ozone NAAQS. The State cites the Colorado Revised Statutes, specifically Air Pollution Prevention and Control Act Sections 25-7-105, 25-7-111, 42-4-301 to 42-4-316, 42-4-414 and Article 7 of Title 25 to demonstrate that the APCD and AQCC have adequate authority to carry out Colorado's SIP obligations with respect to the 1997 ozone NAAQS and revise its SIP as necessary. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. Finally, section IV of Colorado's Common Provisions contains requirements for

members of the AQCC to disclose potential conflicts of interest.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) period reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. *Colorado's response to this requirement:* Colorado AQCC Regulations 1, 3, and 6 address the issue of stationary source monitoring. Colorado Regulation 1 sets forth emission limitations, equipment requirements and work practices (abatement and control measures) intended to control the emissions of particulates, smoke, and sulfur dioxides from new and existing stationary sources. Colorado Regulation 3 requires stationary sources to report their emissions on a regular basis through APENs. This air pollutant inventory program is described in the Colorado Pollution Prevention and Control Act Section 25-7-114.1 (C.R.S.) and in Colorado Regulation 3, Part I.VIII that allows for monitoring and record keeping of air pollutants. Colorado Regulation 6 sets standards for performance of new stationary sources in the state and establishes monitoring system requirements.

The Colorado Air Pollution Control Division may require owners and operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the Division under the Colorado AQCC Common Provisions.

b. *EPA Analysis:* The regulations cited by Colorado, including APEN reporting requirements and requirements in Regulation No. 8. I.VIII, meet the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *Colorado's response to this requirement:* The SIP includes contingency plans to implement emergency powers similar to Section

303 of the CAA. Such contingency plans, called Denver Emergency Episode Plans, address ozone, particulate matter, and carbon monoxide. The Colorado Pollution Prevention and Control Act Sections 25–7–112 and 25–7–113, which have various sections similar to 42 U.S.C. 7603, generally describe Colorado's authority regarding Emergency Episodes. For example, 25–7–112 (2) provides the Colorado Air Pollution Control Division with authority to implement the Emergency Plan through the Governor of Colorado issuing an order in regard to emergency power.

b. *EPA analysis:* Colorado Pollution Prevention and Control Act Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. In addition, the Denver Emergency Episode Plan, applicable to the Denver metropolitan area, satisfies the requirements of 40 CFR part 51, subpart H (See 74 FR 47888). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this Act.

a. *Colorado's response to this requirement:* The State of Colorado has the ability and authority to address and revise the SIP due to changes in the NAAQS or due to findings of inadequacies.

The Colorado AQCC has the authority and the duty to adopt and revise a State Implementation Plan as necessary to comply with the federal requirements. Colorado Air Pollution Prevention and Control Act Section 25–7–105(1)(a)(I) (C.R.S.) directs the Colorado Air Quality Control Commission to promulgate rules and regulations as related to a comprehensive SIP which will assure attainment and maintenance of the NAAQS and which will prevent significant deterioration of air quality in the State of Colorado.

Colorado Air Pollution Prevention and Control Act Section 25–7–109 (C.R.S.) also gives the Colorado Air

Quality Control Commission the authority to promulgate emission control regulations.

b. *EPA analysis:* Colorado's statutory provision at Colorado Air Pollution Prevention and Control Act Section 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H).

10. *Nonattainment Area Plan or Plan Revision under Part D:* Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of Part D of this subchapter (relating to nonattainment areas).

a. *EPA analysis for Section 110(a)(2)(I):* As noted above, the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

a. *Colorado's response to this requirement:* Engineering and meteorological consultation is provided by the State to local agencies. The State assists local agencies in planning air management programs for their respective areas. Colorado holds public meetings and hearings on all SIP revisions in accordance with the AQCC Procedural Rules. Public comment is solicited and accepted at Colorado AQCC meetings and hearings. Colorado's Transportation Conformity Rule, Regulation 10, specifies consultation procedures for SIP revisions in Section IV.F.

Also, as part of the State of Colorado's Visibility SIP, the Colorado Air Pollution Control Division consults with the Federal Land Managers as necessary and required.

b. *EPA Analysis:* The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of

CAA section 121. Furthermore, EPA previously approved Colorado's SIP submission to meet the requirements of CAA section 127 (45 FR 53147, Aug. 11, 1980).

Colorado's SIP regulations for its PSD program were federally-approved and made part of the SIP on September 2, 1986 (51 FR 31125). EPA has further evaluated the State's SIP-approved PSD program in this proposed action in section IV.3, element 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the Colorado SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. *Air quality and modeling/data:* Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. *Colorado's response to this requirement:* Colorado has the authority and resources to model for criteria pollutants. Air quality modeling is done for SIP revisions and for transportation conformity. Colorado Regulation 3 (Air Pollution Emissions Notices, Construction Permits and Fees, Operating Permits, and Prevention of Significant Deterioration) requires stationary sources to predict the effect of air pollutants in attainment areas. Regulation 3 also details the State of Colorado's program regarding permitting as related to air quality modeling and data handling in predicting the effect of emissions of a pollutant with an established NAAQS. Regulatory requirements for Air Quality Related Values as related to modeling are described within Colorado Regulation 3, Part B subsection X and XI. A permit modification for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the federal act, found in 40 CFR part 72 as described under Colorado Regulation 3, Part C, subsection X.K.

The Modeling, Meteorology, and Emission Inventory Unit within the Colorado Air Pollution Control Division performs and reviews air quality impact analyses for a variety of programs, including SIP revisions, transportation conformity determinations, stationary source permitting, environmental impact statements, and hazardous waste site studies. The analyses include modeling, meteorological analysis, and emission inventory development for mobile sources and area stationary sources such as woodburning. The Unit also performs air quality forecasting for the Denver-area High Pollution Season, open burning, and for special air quality studies. Additional information regarding these programs and authority is provided below. Some of these programs are found in the SIP. For example, both Colorado AQCC Regulation 4 (Woodburning) and the Denver PM₁₀ SIP address State air quality modeling programs.

PSD and Increment Consumption: Colorado's PSD program includes a requirement that the State periodically assess the adequacy of its plan to prevent significant deterioration of air quality. This is presented in Regulation 3, Part B, Section VII. In addition, Regulation 3, Part A, Section VIII "Technical Modeling and Monitoring Requirements" states that all estimates of ambient concentrations required under Regulation 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by EPA and specifically approved by the Division.

SIP development: Modeling is performed in the development and revision of SIPs, as needed, to ensure that specific areas of the state will maintain compliance with the NAAQS in light of development and increased population and traffic.

Permits: The primary Colorado regulation for air quality permits is Colorado AQCC Regulation No.3. Certain new/modified air pollution sources are subject to the regulatory modeling requirements in Regulation 3. Regulation 3, Part A, subsection VIII describes Colorado's technical modeling and monitoring requirements. Modeling is often required to obtain a construction permit. While modeling is not required to obtain an operating permit, it may be required if the operating permit is modified (in Regulation 3, Part C, subsection X—Minor Permit Modification Procedures). Operating permits may also be subject to modeling if the application is for a combined construction/operating permit (in Regulation 3, Part C, subsection III.C.12.d).

b. *EPA Analysis:* Colorado's SIP meets the requirements of CAA Section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, Colorado's Regulation 3 Part A.VIII requires estimates of ambient air concentrations be based on applicable air quality models approved by EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees:* Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. *Colorado's response to this requirement:* The State of Colorado requires the owner or operator of a major stationary source to pay the Colorado Air Pollution Control Division any fee necessary to cover the reasonable costs of reviewing and acting upon any permit applications. The collection of fees is described in Colorado AQCC Regulation 3. Specifically, Regulation 3, Part A.VI describes how each applicant required to obtain a permit must pay a fee, including the cost of permit review and relevant actions. Also, stationary source owners or operators must pay an annual fee based on total emissions. The funds are used by the State to administer programs for the control of air pollution from stationary sources.

b. *EPA analysis:* Colorado's approved title V operating permit program meets the requirements of CAA section 111(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, Oct. 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

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

a. *Colorado's response to this requirement:* Colorado AQCC Regulation 10, "Transportation Conformity," defines the criteria the Colorado AQCC uses for transportation conformity determination to develop SIP revisions in non-attainment areas.

Colorado AQCC Regulation 3 also provides for consultation and participation by local entities. Local governments receive notice and have the opportunity to comment on and participate in construction permit review procedures and operating permit application procedures.

The Colorado AQCC holds a public hearing before adopting any regulatory revisions to the SIP. Local political subdivisions may participate in the hearing.

b. *EPA Analysis:* Colorado's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 1997 ozone NAAQS.

V. What action is EPA taking?

In this action, EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Colorado for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA proposes to approve the section 110(a)(2)(C) infrastructure element in full for the 1997 ozone NAAQS in the event that Colorado takes one of the actions described in the discussion of that element. In the alternative, EPA proposes to disapprove the section 110(a)(2)(C) element to the extent described and to otherwise approve this element. EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS.

VI. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: May 10, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–12213 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 110427267–1267–01]

RIN 0648–BB04

Endangered and Threatened Species: Designation of a Nonessential Experimental Population for Middle Columbia River Steelhead Above the Pelton Round Butte Hydroelectric Project in the Deschutes River Basin, Oregon

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

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate the Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*), recently reintroduced into the upper Deschutes River basin in central Oregon, as a nonessential experimental population (NEP) under the Endangered Species Act (ESA). This NEP designation would expire 12 years after the first generation of adults return to the NEP area. A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment (see **ADDRESSES** and **INSTRUCTIONS** section below).

DATES: To allow us adequate time to consider your comments on this proposed rule, they must be received no later than July 18, 2011. If you would like to request a public hearing, we must receive your request in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section, by July 5, 2011. Comments on the EA must be received by July 18, 2011.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

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

- *Mail:* Submit written comments to Assistant Regional Administrator, Hydropower Division, Northwest Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

- *Fax:* (503) 231–2318.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) voluntarily

submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

You may access a copy of the draft EA by one of the following:

- Visit NMFS’ Northwest Region Web site at <http://www.nwr.noaa.gov>.

- Call 503.736.4741 and request to have a CD or hard copy mailed to you.

- Obtain a CD or hard copy by visiting NMFS’ Portland office at 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232.

You may submit comments on the draft EA by one of the following methods:

- *E-mail:* expopEA.nwr@noaa.gov.

- *Mail:* Submit written comments to Hydropower Division, FERC and Water Diversions Branch, NMFS, 1201 NE Lloyd Blvd., Portland, OR 97232.

Please see the draft EA for additional information regarding commenting on that document.

FOR FURTHER INFORMATION CONTACT: Scott Carlon, NMFS, 1201 NE Lloyd Blvd., Portland, OR 97232 (503–231–2379), or Marta Nammack, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

SUPPLEMENTARY INFORMATION:

Context

On March 25, 1999, NMFS listed the Middle Columbia River (MCR) steelhead distinct population segment (DPS) as threatened under the Endangered Species Act (ESA) (16 U.S.C. 1531–1544) (64 FR 14517). The MCR steelhead DPS range covers approximately 35,000 square miles (90,650 sq km) of the Columbia plateau of eastern Oregon and eastern Washington. The Deschutes River in central Oregon is one of six major river basins supporting steelhead in this DPS. Since 1968, the Pelton Round Butte Hydroelectric Project (Pelton Round Butte) on the Deschutes River has blocked steelhead from accessing nearly 200 miles (322 km) of historical spawning and rearing habitat.

In this rulemaking, we are proposing to designate as an experimental population the MCR steelhead currently being reintroduced to the upper Deschutes River basin. This reintroduction is a requirement of the new hydropower license for the Pelton Round Butte Hydroelectric Project in