

section 182(f) of the Act in relation to the 2008 8-hour ozone standards. The exemption would apply throughout the entire State of Maine. EPA is also proposing to approve Maine's February 11, 2013 request for a limited "opt-out" or "restructuring" of the section 182(f) OTR requirements pertaining to VOC nonattainment NSR permitting, currently applicable in Maine only by virtue of Maine's location in the OTR, not by virtue of Maine having any areas designated nonattainment for the 2008 8-hour ozone standards. In addition, EPA is proposing to approve Maine's request for the SIP revisions described earlier in this notice.

If EPA takes final action to approve Maine's requests, including the SIP revisions described above, the following consequences would result. First, any NO<sub>x</sub> RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would now not be required. However, any NO<sub>x</sub> and/or VOC requirements earlier approved into Maine's SIP to implement regional haze requirements or requirements relating to prior, pre-2008, ozone standards, will remain in Maine's SIP. Second, nonattainment NSR permitting requirements for major new or modified stationary sources of NO<sub>x</sub> in Maine would no longer apply anywhere in the State. Third, the nonattainment NSR permitting requirements applicable to major new and modified stationary sources of VOC, which now apply throughout the entire State of Maine, would no longer apply in any area in Maine. Fourth, for major new and modified stationary sources of VOC and NO<sub>x</sub> throughout the entire State of Maine, the Maine SIP's PSD permitting requirements would apply in lieu of the nonattainment NSR permitting requirements. Finally, the requirements applicable to sources holding existing nonattainment NSR permits will remain in effect.

As part of this action, EPA is proposing to revise certain provisions in Maine's SIP. The SIP revisions would affect specific parts of two chapters of Maine's nonattainment NSR permitting regulations previously approved by EPA into the SIP. The first is Chapter 113 entitled "Growth Offset Regulations" which contains emissions offsets requirements for sources subject to nonattainment NSR. The second is Chapter 115 entitled "Emission License Regulation" which includes generally applicable requirements for sources that must obtain an emissions license in Maine. More specifically, EPA is proposing to remove from Chapter 113 all references to the OTR as a basis for

the applicability of VOC nonattainment NSR permitting requirements. Those references appear in section 1 (Applicability), section 2.C.1 (Ozone Nonattainment Areas), section 2.C.2 (Ozone Nonattainment Areas, Location of offsets), and section 3 (Exemptions). EPA also is proposing to remove references in Chapter 113 to the permissible location of emissions offsets for attainment areas (these provisions for attainment areas are only relevant if location in the OTR is a basis for nonattainment NSR applicability). These references appear in sections 2.C.3 (Ozone Nonattainment Areas) and 2.C.3.b. (Ozone Nonattainment Areas) of Chapter 113, and will not be relevant if the section 176A(a)(2) restructuring is approved, because new or modified major stationary sources of VOC located in areas attaining the ozone standard will no longer be required to obtain offsets. In Chapter 115, EPA proposes to remove the reference to the OTR in Sections V.B.2 (Criteria for Granting a License) and VI.B.2 (New sources and modifications, Nonattainment areas).

#### X. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a state's 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 state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions, merely propose to approve Maine's requests as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do 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 Maine 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.

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

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 18, 2013.

#### H. Curtis Spalding,

*Regional Administrator, EPA New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2013-0088; FRL-9841-6]

#### Approval and Promulgation of Implementation Plans; Washington: Thurston County Second 10-Year PM<sub>10</sub> Limited Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a limited maintenance plan submitted by the State of Washington on July 1, 2013, for the Thurston County maintenance area (Thurston County) for particulate matter with an aerodynamic diameter less than or equal to a nominal

10 micrometers (PM<sub>10</sub>). The EPA is also proposing to approve both local and state regulatory updates related to this maintenance plan.

**DATES:** Comments must be received on or before September 4, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0088, by any of the following methods:

A. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

B. *Mail*: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101

C. *Email*: R10-Public\_Comments@epa.gov

D. *Hand Delivery*: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

*Instructions*: Direct your comments to Docket ID No. EPA-R10-OAR-2013-0088. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the electronic docket are listed in the *www.regulations.gov index*. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553-0256, *hunt.jeff@epa.gov*, or by using the above EPA, Region 10 address.

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

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## I. This Action

The EPA is proposing to approve the limited maintenance plan submitted by the State of Washington (the State) on July 1, 2013, for Thurston County, including approval of a monitoring system modification for the area. The limited maintenance plan also includes Washington State Department of Ecology (Ecology) regulatory changes that strengthen the control measures contained in the State Implementation Plan (SIP) since our last approval on

January 15, 1993 (58 FR 4578). In addition to the state regulatory changes, the EPA is proposing to approve corresponding local regulations adopted by the Olympic Region Clean Air Agency (ORCAA) because they have direct implementation authority in Thurston County. Lastly, the EPA is proposing to remove Chapter 173-433-170 Washington Administrative Code (WAC) *Retail Sales Fee* from the SIP because this provision was not a control measure relied on for attainment or a required element of the SIP. The EPA has determined that removal of this provision will not interfere with continued attainment and maintenance of the standard. Similarly, the EPA is proposing to remove Chapter 173-433-200 WAC *Regulatory Actions and Penalties* from the SIP incorporated by reference in 40 CFR 52.2470. The EPA reviews and approves state submissions to ensure they provide adequate enforcement authority. However, regulations describing agency enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. Likewise, the EPA has reviewed and is proposing approval of ORCAA Rule 8.1.6 *Penalties* as having adequate enforcement authority, but will not incorporate this section by reference into the SIP codified in 40 CFR 52.2470.

## II. Background

The EPA identified a portion of Thurston County as a "Group I" area of concern due to measured violations of the newly promulgated 24-hour PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS) on August 7, 1987 (52 FR 29383). Ecology and ORCAA worked with the communities of Lacey, Olympia, and Tumwater to develop a plan for attainment of the PM<sub>10</sub> NAAQS. The plan was focused on wood smoke reduction and was submitted in November 1988. On November 15, 1990, the Clean Air Act (CAA) Amendments under section 107(d)(4)(B), designated the Thurston County Group I area as nonattainment for PM<sub>10</sub> by operation of law. The EPA published a **Federal Register** notice announcing all areas designated nonattainment for PM<sub>10</sub> on March 15, 1991 (56 FR 11101). In order to address the additional moderate area requirements imposed by the 1990 CAA Amendments, Ecology submitted a supplement to the attainment plan in November 1991. EPA took final action to approve the entire plan on July 27, 1993 (58 FR 40056).

The control measures contained in the Thurston County plan rapidly brought the area into attainment by 1991 and

formed the foundation of the wood smoke reduction program still in use today. As PM<sub>10</sub> levels in the area steadily declined, the EPA redesignated the Thurston County nonattainment area to a maintenance area on October 4, 2000 (65 FR 59128). In addition to approving Ecology's redesignation request for the area, the EPA also approved a maintenance plan to ensure continued compliance with the PM<sub>10</sub> NAAQS for ten years. The purpose of the current limited maintenance plan is to fulfill the second 10-year planning requirement of Clean Air Act section 175A (b) to ensure compliance through 2020.

### III. Public and Stakeholder Involvement in Rulemaking Process

Section 110(a)(2) of the Clean Air Act requires that each SIP revision offer a reasonable opportunity for notice and public hearing. This must occur prior to the revision being submitted by the State to the EPA. The State provided notice and an opportunity for public comment beginning April 22, 2013, with no comments received. Under the requirements of 40 CFR 51.102(a), the State also offered an opportunity for a public hearing; however no requests were received. This SIP revision was submitted by the Governor's designee and was received by the EPA on July 1, 2013. The EPA evaluated Ecology's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2).

### IV. The Limited Maintenance Plan Option for PM<sub>10</sub> Areas

#### A. Requirements for the Limited Maintenance Plan Option

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM<sub>10</sub> nonattainment areas (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas" (limited maintenance plan option memo). The limited maintenance plan option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard ten years into the future. Thus, the EPA provided the maintenance demonstration for areas meeting the criteria outlined in the memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary.

To qualify for the limited maintenance plan option the State must demonstrate the area meets the criteria described below. First, the area should have attained the PM<sub>10</sub> NAAQS. Second, the most recent five years of air quality data at all monitors in the area, called the 24-hour average design value, should be at or below 98 µg/m<sup>3</sup>. Third, the State should expect only limited growth in on-road motor vehicle PM<sub>10</sub> emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. Lastly, the memo identifies core provisions that must be included in all limited maintenance plans. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

#### B. Conformity Under the Limited Maintenance Plan Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While qualification for the limited maintenance plan option does not exempt an area from the need to affirm conformity, conformity may be demonstrated without submitting an emissions budget. Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM<sub>10</sub> NAAQS would result. For transportation conformity purposes, the EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in 40 CFR 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

### V. Review of the State's Submittal

#### A. Has the State demonstrated that Thurston County qualifies for the limited maintenance plan option?

As discussed above, the limited maintenance plan option memo outlines the requirements for an area to qualify. First, the area should be attaining the NAAQS. Thurston County has been attaining the NAAQS since 1991. EPA formally redesignated the area from nonattainment to attainment, making it a maintenance area effective December 4, 2000 (65 FR 59128).

Second, the average design value for the past five years of monitoring data must be at or below the critical design value of 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS. The critical design value is a margin of safety in which an area has a one in ten probability of exceeding the NAAQS. Using the most recently available Federal Reference Method (FRM) monitoring data for the years 2001–2005, the State's analysis demonstrated that Thurston County's average design value was 60 µg/m<sup>3</sup>, well below the 98 µg/m<sup>3</sup> threshold. An FRM monitor is one that has been approved by the EPA under 40 CFR part 58 to measure compliance with the NAAQS. As discussed later in this proposal, Ecology and ORCAA also calculated average design values using more recent non-FRM nephelometer data for the period 2008 to 2012. This more recent monitoring data shows that PM<sub>10</sub> levels continued to decline with an average design value of 45 µg/m<sup>3</sup>. The EPA reviewed the data provided by Ecology and ORCAA and finds that Thurston County meets the design value criteria outlined in the limited maintenance plan option memo.

Third, the area must meet the motor vehicle regional emissions analysis test described in attachment B of the limited maintenance plan option memo. Ecology submitted an analysis showing that growth in on-road mobile PM<sub>10</sub> emissions sources was minimal and would not threaten the assumption of maintenance that underlies the limited maintenance plan policy. Using the EPA's methodology, Ecology calculated a regional emissions analysis margin of safety of 62 µg/m<sup>3</sup>, easily meeting the threshold of 98 µg/m<sup>3</sup>. The EPA reviewed the calculations in the State's limited maintenance plan submittal and concurs with this conclusion.

Lastly, the limited maintenance plan option memo requires all controls relied on to demonstrate attainment remain in place for the area to qualify. The controls on wood smoke reduction, Chapter 173–433 WAC *Solid Fuel Burning Device Standards*, were

approved by the EPA into the SIP on January 15, 1993 (58 FR 4578). As discussed later in this proposal, Ecology made updates to Chapter 173–433 WAC strengthening the control measures since the EPA's last approval. The EPA reviewed these changes and confirmed that the underlying control measures remain in place, thus qualifying for the limited maintenance plan option.

As described above, Thurston County meets the qualification criteria set forth in the limited maintenance plan option memo. Under the limited maintenance plan option, the State will be expected to determine on an annual basis that the criteria are still being met. If the State determines that the limited maintenance plan criteria are not being met, it should take action to reduce PM<sub>10</sub> concentrations enough to requalify. One possible approach the State could take is to implement contingency measures. Section V. I. provides a description of contingency provisions submitted as part of the limited maintenance plan submittal. To insure this requirement is met, Ecology commits to reporting to the EPA on continued qualification for the limited maintenance plan option in the annual monitoring network report.

*B. Does the State have an approved attainment emissions inventory?*

Pursuant to the limited maintenance plan option memo, the State's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the limited maintenance plan option.

Ecology's Thurston County limited maintenance plan submittal includes an emissions inventory based on Ecology's 2005 Triennial Emissions Inventory and the 2008 National Emissions Inventory. These base years represent the most recent emissions inventory data available and are consistent with the data used to determine applicability of the limited maintenance plan option (i.e., having no violations of the PM<sub>10</sub> NAAQS). The emissions inventory focused on four significant source categories chosen based on a review of the original maintenance plan. These source categories, in order of relative impact, are wood burning, construction dust, road dust, and vehicle exhaust and tire wear. Since the Thurston County area is primarily residential and governmental, other source categories, including industrial sources, are insignificant. This data supports

Ecology's conclusion that the control measures contained in the original attainment plan will continue to protect and maintain the PM<sub>10</sub> NAAQS.

*C. Does the limited maintenance plan include an assurance of continued operation of an appropriate EPA-Approved air quality monitoring network, in accordance with 40 CFR Part 58?*

PM<sub>10</sub> monitoring was established in the Thurston County area in 1985, with many changes to the monitoring technology and requirements since. Beginning in 1990, Ecology and ORCAA collocated a nephelometer with the existing PM<sub>10</sub> FRM monitor. A nephelometer is an instrument that is widely used to calculate particulate matter concentrations based on light scatter measurements. While not an EPA-approved FRM monitoring method, Ecology and ORCAA found that the nephelometer and the PM<sub>10</sub> FRM monitor were highly correlated. Because of this high level of correlation between the monitors, as part of the 2007 annual network monitoring report under 40 CFR part 58, Ecology requested replacing the FRM monitor with the nephelometer so that resources could be redirected to more pressing environmental issues such as ensuring that areas of concern in the State were in compliance with the recently revised fine particulate matter (PM<sub>2.5</sub>) NAAQS, which is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. The EPA approved this request on November 16, 2007. A full description of the correlation data is included in the limited maintenance plan submittal. The EPA is proposing to approve this monitoring system modification, using nephelometer data to represent PM<sub>10</sub> concentrations, under 40 CFR 58.14(c) for the second 10-year maintenance plan period because this modification is a reproducible approach to representing air quality in the Thurston County maintenance area, and the area continues to meet all applicable Appendix D requirements evaluated as part of the annual network approval process. As detailed in the limited maintenance plan, ORCAA will calculate the PM<sub>10</sub> design value estimate annually from nephelometer data through 2020 to confirm the area continues to meet the PM<sub>10</sub> NAAQS. ORCAA also makes a commitment to continue operation of a nephelometer in the Thurston County maintenance area through the 2020, the end of the maintenance period, to determine PM<sub>10</sub> levels. In the unlikely event that after exceptional events are discounted, the

second highest PM<sub>10</sub> concentration in a calendar year based on nephelometer monitoring exceeds the LMP threshold of 98 µg/m<sup>3</sup>, Ecology, ORCAA, and EPA will discuss reestablishment of FRM monitoring as part of the annual network monitoring report process.

*D. Does the plan meet the Clean Air Act requirements for contingency provisions?*

Clean Air Act section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. The EPA is proposing approval of ORCAA Rule 8.1.4(e) into the SIP. This regulation was passed in conjunction with the 1997 maintenance plan submission and prohibits the use of uncertified woodstoves in the Thurston County maintenance area for the sole purpose of meeting Clean Air Act requirements for contingency measures. The EPA reviewed ORCAA Rule 8.1.4(e) and determined that it meets the contingency measure requirements. The contingency measure will be triggered if a violation of the PM<sub>10</sub> standard occurs at the Thurston County maintenance area monitor based on nephelometer and/or FRM monitoring. A violation of the PM<sub>10</sub> standard will be determined by the procedures outlined in 40 CFR Part 50, Appendix K—Interpretation of the NAAQS for Particulate Matter.

*E. Has the State met conformity requirements?*

(1) Transportation Conformity

Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

(b) Transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

(c) The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

Upon approval of the Thurston County limited maintenance plan, the area is exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above.

(2) General Conformity

For Federal actions required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that "the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP" (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions.

Emissions budgets in general conformity allow increases in emissions up to specified levels. The State has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

**VI. Revisions to the Washington SIP**

As previously discussed, the EPA approved the wood smoke control measures contained in Chapter 173-433 WAC *Solid Fuel Burning Device Standards* on January 15, 1993, based on state regulatory provisions in effect as of October 18, 1990 (58 FR 4578). Ecology subsequently revised Chapter 173-433 WAC to strengthen the control measures with changes such as adding one of the nation's most stringent state woodstove certification standards and by moving towards a two-stage burn ban system to encourage adoption of the cleaner burning woodstoves. These changes to Chapter 173-433 WAC were effective on April 20, 1991 and March 6, 1993, but were not submitted for adoption into the SIP at that time. A redline strikeout copy of the regulatory changes along with the EPA's analysis is included in the docket for this action. Based on our review, the EPA is proposing to approve Ecology's 1991 and 1993 regulatory updates. In addition, Ecology requested that the EPA remove from the approved SIP Chapter 173-433-170 WAC *Retail Sales Fee* (state effective January 3, 1989) because this provision is not a control measure or a required element of the SIP. After reviewing the original Thurston County attainment plan, the EPA agrees that this provision was not a control measure relied upon for attainment and removal of Chapter 173-433-170 from the SIP will not interfere with continued attainment or maintenance of the NAAQS. Similarly, the EPA erred in including Chapter 173-433-200 WAC *Regulatory Actions and Penalties* in the SIP incorporated by reference in 40 CFR 52.2470. The EPA reviews and approves state submissions to ensure they provide adequate enforcement authority. However, regulations describing agency enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. Therefore, we will remove Chapter 173-433-200 WAC from 40 CFR 52.2470.

While the provisions of Chapter 173-433 WAC *Solid Fuel Burning Device Standards* apply statewide per Chapter 173-433-020 WAC, Ecology requested that the EPA approve portions of ORCAA Rule 8.1 *Wood Heating* and ORCAA Rule 6.2 *Outdoor Burning* because ORCAA has direct implementation authority in Thurston County. The EPA reviewed these regulations to ensure they are as stringent as the existing control measures, with a full copy of the EPA's analysis included in the docket for this action. It is important to note that the ORCAA control measures, particularly burn ban trigger levels, focus on the more stringent and environmentally relevant 24-hour PM<sub>2.5</sub> NAAQS. Ecology and ORCAA provided an analysis of PM<sub>10</sub> and PM<sub>2.5</sub> data collected by collocated FRM monitors at the Thurston County monitoring site. ORCAA found that the two pollutants were correlated and one could be determined from the other with a high degree of accuracy within the range of observations. The 24-hour PM<sub>2.5</sub> NAAQS revised in 2006 has a protection level of 35 µg/m<sup>3</sup> compared to the 1987 PM<sub>10</sub> 24-hour NAAQS of 150 µg/m<sup>3</sup>. Based on the monitoring data from Thurston County, ORCAA found that in the critical winter season the majority of PM<sub>10</sub> is PM<sub>2.5</sub>. The statistical relationship between the two PM parameters indicates PM<sub>2.5</sub> levels would need to exceed 139 µg/m<sup>3</sup> before the PM<sub>10</sub> NAAQS is exceeded. The EPA concurs that Thurston County would violate the 24-hour PM<sub>2.5</sub> NAAQS well before it exceeded the PM<sub>10</sub> NAAQS. By setting burn ban trigger levels to protect the 35 µg/m<sup>3</sup> 24-hour PM<sub>2.5</sub> NAAQS, ORCAA is simultaneously protecting the 150 µg/m<sup>3</sup> 24-hour PM<sub>10</sub> NAAQS. Finally, ORCAA Rule 8.1.4(e) provides a local clean air agency rule for implementing the contingency measure which would prohibit the use of uncertified wood stoves. The EPA reviewed the ORCAA regulations and determined that they strengthen the SIP and meet the CAA requirements. As discussed above with respect to enforcement authorities, the EPA reviewed and proposes approval of ORCAA Rule 8.1.6 *Penalties* but will not incorporate this provision by reference in 40 CFR 52.2470.

TABLE 1—SUBMITTED RULES

Agency	Citation	Title	State or local effective date	Submitted
Ecology .....	173-433-030 .....	Definitions .....	04/20/91	07/01/13

TABLE 1—SUBMITTED RULES—Continued

Agency	Citation	Title	State or local effective date	Submitted
Ecology	173-433-100	Emission performance standards	03/06/93	07/01/13
Ecology	173-433-110	Opacity standards	03/06/93	07/01/13
Ecology	173-433-120	Prohibited fuel types	04/20/91	07/01/13
Ecology	173-433-140	Impaired air quality criteria	04/20/91	07/01/13
Ecology	173-433-150	Curtailement	04/20/91	07/01/13
ORCAA	6.2.3 (only as it applies to the cities of Olympia, Lacey, and Tumwater).	No residential or land clearing burning	02/04/12	07/01/13
ORCAA	6.2.6	Curtailement	03/18/11	07/01/13
ORCAA	6.2.7	Recreational Burning	03/18/11	07/01/13
ORCAA	8.1.1	Definitions	05/22/10	07/01/13
ORCAA	8.1.2 (b) and (c)	General emission standards	05/22/10	07/01/13
ORCAA	8.1.3	Prohibited fuel types	05/22/10	07/01/13
ORCAA	8.1.4	Curtailement	05/22/10	07/01/13
ORCAA	8.1.5	Exceptions	05/22/10	07/01/13
ORCAA	8.1.6	Penalties	05/22/10	07/01/13
ORCAA	8.1.7	Sale and installation of uncertified woodstoves.	05/22/10	07/01/13
ORCAA	8.1.8	Disposal of uncertified woodstoves	05/22/10	07/01/13

**VII. Proposed Action**

The EPA is proposing to approve the second 10-year limited maintenance plan for Thurston County submitted by Washington State. The state’s submittal also included a request to approve state regulatory updates to the original control measures included in Chapter 173-433 WAC as well as corresponding local ORCAA regulations. The EPA is proposing to approve these regulatory changes as well as corrections to the EPA’s January 1993 approval because these changes strengthen the SIP.

**VIII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly

provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands.

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: July 22, 2013.

**Dennis J. McLerran,**  
*Regional Administrator, Region 10.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2013-0510; FRL-9841-9]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan