

As shown in Tables 5 and 6, the NO_x and VOC emission reductions through 2018 are sufficient to provide at least 3 percent emission reductions and thus we find that the contingency measures requirement are met for RFP.

4. The Motor Vehicle Emissions Budgets (MVEBs)

According to the transportation conformity rule, an RFP plan must establish MVEBs for transportation conformity purposes. See 40 CFR 93.118(b)(1)(i). The MVEB is the mechanism to ensure that future transportation activities will not produce new air quality violations, worsen existing violations, delay reaching RFP milestones, or delay timely attainment of the NAAQS. A MVEB establishes the maximum amount of emissions allowed in the SIP for on-road motor vehicles.

As part of the July 10, 2015, SIP revision submittal, the TCEQ included VOC and NO_x MVEBs for 2017; these budgets are provided in Table 7. For the budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). The availability of these budgets was posted on our Web site on August 25, 2015, for the purpose of soliciting public comments on their adequacy. The comment period closed on September 24, 2015, and we received no comments. On January 11, 2016, we published the Notice of Adequacy Determination for these MVEBs (81 FR 1184). As a result of such adequacy determination, these MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. Today we are proposing that these MVEBs are fully consistent with RFP, as it sets the allowable on-road mobile emissions the DFW area can produce and continue to demonstrate RFP.

TABLE 7—RFP MOTOR VEHICLE EMISSIONS BUDGETS FOR DFW (tpd)

Year	NO _x	VOC
2017	148.36	77.18

III. Proposed Action

The EPA is proposing to approve revisions to the Texas SIP to meet certain requirements under section 182(b) of the CAA for the DFW Moderate nonattainment area under the 2008 ozone standard that were

submitted to EPA on July 10, 2015 and supplemented on April 22, 2016. We are proposing to approve the revised base year emission inventory, the RFP plan, the 2017 MVEBs; and RFP contingency measures.

IV. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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, the SIP is not approved to apply on any Indian reservation land

or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 14, 2016.

Ron Curry,

Regional Administrator, Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2012-0812; FRL-9951-36-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Infrastructure for the Lead, Ozone, Nitrogen Dioxide and Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) submissions from the State of Oklahoma regarding the 2008 Lead (Pb), 2008 Ozone, 2010 Nitrogen Dioxide (NO₂), and 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS or standards). The four submittals address how the existing SIP provides for implementation, maintenance, and enforcement of these four NAAQS (infrastructure SIP or i-SIP). These i-SIPs ensure that the Oklahoma SIP is adequate to meet the State's responsibilities under the Act, including the CAA requirements for interstate transport of Pb and NO₂ emissions.

DATES: Written comments must be received on or before October 20, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2012-0812, at <http://>

www.regulations.gov or via email to paige.carrie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige, (214) 665-6521, paige.carrie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The docket index and publicly available docket materials for this action are available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT:

Carrie Paige, 214-665-6521, paige.carrie@epa.gov. To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: In this document “we,” “us,” and “our” means the EPA.

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of such new or revised NAAQS. Section 110(a)(2) lists specific requirements that SIPs must include to adequately address such new or revised NAAQS, as applicable.¹

¹ See EPA guidance documents: <http://www3.epa.gov/airquality/lead/pdfs/20111014infrastructure.pdf> and http://epa.gov/air/urbanair/sipstatus/docs/Guidance_on_

On March 27, 2008, following a periodic review of the NAAQS for ozone, EPA revised the primary and secondary 8-hour NAAQS for ozone: the level of the primary and secondary standards was revised to 0.075 parts per million (ppm), expressed to three decimal places, based on a 3-year average of the fourth-highest maximum 8-hour average concentration (see 73 FR 16436).² Likewise, on November 12, 2008, we revised the primary and secondary NAAQS for Pb to 0.15 micrograms per cubic meter (see 73 FR 66964). Similarly, on February 9, 2010, EPA revised the primary NAAQS for NO₂ to establish a new 1-hour standard at a level of 100 parts per billion (ppb), based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard (see 75 FR 6474).³ Also, on June 22, 2010, we revised the primary NAAQS for SO₂ to establish a new 1-hour standard at a level of 75 ppb, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (see 75 FR 35520). We refer to each of these NAAQS by the year promulgated, *e.g.*, “the 2008 ozone standard.” For more information on these standards, please visit <https://www.epa.gov/criteria-air-pollutants>.

Our technical evaluation of the Oklahoma submittals is provided in the Technical Support Document (TSD), which is in the docket for this rulemaking.⁴ With the exception of three sub-elements (or “prongs”) that pertain to interstate transport and visibility protection, EPA is proposing to approve the Oklahoma i-SIP

Infrastructure SIP Elements_Multipollutant_FINAL_Sept_2013.pdf.

² On October 1, 2015, EPA strengthened the primary and secondary ozone standards to 70 parts per billion (80 FR 65292, October 26, 2015). The submittals under evaluation in this proposal do not address such standards. For more information on the 2015 ozone standards, please visit our Web site: <https://www.epa.gov/ozone-pollution/2015-national-ambient-air-quality-standards-naaqs-ozone>.

³ EPA also established requirements for the NO₂ monitoring network that includes monitors at locations where maximum NO₂ concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO₂ concentrations that occur more broadly across communities.

⁴ Additional information on: EPA’s approach for reviewing i-SIPs; the details of the SIP submittal and EPA’s evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the Oklahoma SIP specific to this review; the specific applicable CAA and EPA regulatory citations; **Federal Register** citations for Oklahoma SIP approvals; Oklahoma minor New Source Review program and EPA approval activities; and Oklahoma Prevention of Significant Deterioration (PSD) program can be found in the TSD.

submittals for the 2008 Pb and ozone NAAQS, as well as the 2010 NO₂ and SO₂ NAAQS as meeting the requirements of an i-SIP. The exceptions are: Section 110(a)(2)(D)(i)(I), prongs 1 and 2, which address the contribution to nonattainment and interfere with maintenance of the 2008 ozone and 2010 SO₂ NAAQS in other states; and section 110(a)(2)(D)(i)(II)—the prong that specifically addresses visibility protection for the 2010 SO₂ NAAQS. We will take separate action on these three prongs for the 2008 ozone and 2010 SO₂ NAAQS submittals.

II. EPA’s Evaluation of the Oklahoma i-SIP and Interstate Transport Submittals

The State’s submittals on October 5, 2012; February 28, 2014; and January 28, 2015 demonstrate how the existing Oklahoma SIP meets the infrastructure requirements for the 2008 Pb and ozone NAAQS and the 2010 NO₂ and SO₂ NAAQS. A summary of our evaluation of the Oklahoma SIP for each applicable element of CAA section 110(a)(2)(A)-(M) follows. These SIP submissions became complete by operation of law on April 5, 2013, August 28, 2014, and July 18, 2015, respectively, pursuant to CAA section 110(k)(1)(B).

(A) *Emission limits and other control measures:* CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act, and other related matters as needed to implement, maintain and enforce each of the NAAQS.⁵ The Oklahoma Clean Air Act (OCA) provides the Oklahoma Department of Environmental Quality (ODEQ) with broad legal authority, to establish and implement air quality programs and enforce regulations it has promulgated. The ODEQ has authority to adopt emission standards and compliance schedules applicable to regulated entities; other measures necessary for attainment and maintenance of the NAAQS; enforce applicable laws, regulations, standards

⁵ The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the NAAQS. Those SIP provisions are due as part of each state’s attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an i-SIP, we are not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the Oklahoma SIP has basic structural provisions for the implementation of the NAAQS.

and compliance schedules; and seek injunctive relief. The approved SIP for Oklahoma is documented at 40 CFR part 52.1920, Subpart LL. Most of the State's air quality rules and standards are codified at Title 252, Chapter 100 of the Oklahoma Administrative Code (denoted OAC 252:100). A detailed list of the applicable rules at OAC 252:100 and elsewhere in the OAC, along with the citations for approval into the SIP, is provided in Table 1 of the TSD.

(B) *Ambient air quality monitoring/data system*: CAA section 110(a)(2)(B) requires SIPs to provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data, and providing such data to EPA upon request. The OCAA provides the authority allowing the ODEQ to collect air monitoring data, quality-assure the results, and report the data. The ODEQ maintains and operates a monitoring network to measure ambient levels of the pollutants in accordance with EPA regulations which specify siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to EPA quality assurance requirements. The ODEQ submits all required data to EPA, following EPA regulations. The monitoring network was approved into the SIP and undergoes annual review by EPA.⁶ In addition, 40 CFR 58.10(d) requires that state assess their monitoring network every five years. The ODEQ submitted their 5-year monitoring network assessments to us on April 11, 2016. Our comments on the 5-year assessment, dated July 22, 2016, are in the docket for this rulemaking.⁷ The ODEQ Web site identifies Oklahoma's ambient monitor locations, and provides past and current concentrations of criteria pollutants measured by the State's monitors.⁸

(C) *Program for enforcement*: CAA section 110(a)(2)(C) requires SIPs to include the following three elements: (1) A program providing for enforcement of the measures in paragraph A above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.*, state-wide permitting of minor sources);

and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).⁹

(1) *Enforcement of SIP Measures*. As noted earlier in section 110(a)(2)(A), the ODEQ and its Executive Director have the authority to enforce the requirements of the OCAA and any regulations, permits, or final compliance orders. This statute also provides the ODEQ and its Executive Director with general enforcement powers. Among other things, they can investigate regulated entities; issue field citations and compliance orders; file lawsuits to compel compliance with the statutes and regulations; commence civil actions; pursue criminal prosecutions; collect criminal and civil penalties; enter into remediation agreements; and issue emergency orders to cease operations. The OCAA also provides additional enforcement authorities and funding mechanisms.

(2) *Minor New Source Review (NSR)*. The CAA requires the SIP to include measures to regulate construction and modification of stationary sources to protect the NAAQS. The Oklahoma minor NSR permitting requirements have been approved in the SIP.¹⁰

(3) *Prevention of Significant Deterioration (PSD) permit program*. Oklahoma's PSD program covers all NSR regulated pollutants, as well as the NAAQS subject to our review contained herein, and has been approved by EPA into the SIP.¹¹

(D)(i) *Interstate Pollution Transport*: There are four requirements the SIP must include relating to interstate transport. The SIP must prohibit emissions within Oklahoma from contributing significantly to the nonattainment of the NAAQS in other states, and from interfering with the maintenance of the NAAQS in other states (section 110(a)(2)(D)(i)(I)). The SIP must also prohibit emissions within

Oklahoma both from interfering with measures required to prevent significant deterioration in other states and from interfering with measures required to protect visibility in other states (section 110(a)(2)(D)(i)(II)).

Lead: We propose to approve the portion of the submittal that addresses the requirement that emissions within Oklahoma are prohibited from contributing to nonattainment of the Pb NAAQS in other states, and from interfering with maintenance of the Pb NAAQS in other states. The physical properties of Pb, which is a basic metal element and very dense, prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air, thus, ambient concentrations of Pb are typically highest near Pb sources. There are no areas within the State of Oklahoma designated as nonattainment with respect to the 2008 lead NAAQS. The ODEQ 2016 ambient monitoring plan provided information on lead sources: there are two significant sources of Pb emissions within the state that emit Pb in amounts equal to or exceeding 0.5 tons per year and no sources within two miles of a neighboring state line.¹²

We are also proposing to approve the portion pertaining to the prevention of significant deterioration in other states for lead, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants, (including greenhouse gas or GHG), which prevents significant deterioration in nearby States. In addition, as described earlier in this section, significant impacts from Pb emissions from stationary sources are limited to short distances from such sources, so visibility is not effected by lead emissions. Thus, we propose to approve the portion of the Oklahoma SIP related to the protection of visibility in other states for the Pb NAAQS.

Nitrogen Dioxide: We propose to approve the portion of the submittal which addresses the prevention of emissions which significantly contribute to the nonattainment of the NO₂ NAAQS in other states and interfere with the maintenance of the NO₂ NAAQS in other states. On February 17, 2012, EPA designated the entire country as "unclassifiable/attainment" for the 2010 NO₂ NAAQS.¹³ As listed in our NO₂ Design Values report, only one maintenance area exists for the prior annual NO₂ NAAQS (Los

⁹ See TSD, beginning on page 6.

¹⁰ EPA is not proposing to approve or disapprove the existing Oklahoma minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (*e.g.*, 76 FR 41076–41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs. Citations for the Oklahoma NSR program are provided in our TSD for this action.

¹¹ See 79 FR 66626, November 10, 2014 and the TSD for further discussion.

⁶ A copy of the 2016 Annual Air Monitoring Network Plan and EPA's approval letter are included in the docket for this proposed rulemaking.

⁷ A copy of the ODEQ's 5-year monitoring network assessment and EPA's evaluation are included in the docket for this proposed rulemaking.

⁸ see http://www.ODEQ.Oklahoma.gov/airquality/monops/sites/mon_sites.html and <http://www17.ODEQ.Oklahoma.gov/tamis/index.cfm?fuseaction=home.welcome>.

¹² Both sources are located in the Tulsa area; see the FY2016 Oklahoma annual network monitoring plan in the docket for this rulemaking.

¹³ 77 FR 9532, February 17, 2012.

Angeles, California).¹⁴ With no nonattainment or maintenance areas in surrounding states, Oklahoma does not significantly contribute to nonattainment or maintenance of these NAAQS in any of the contiguous states. Furthermore, during the three most recent design value periods (2011 through 2013, 2012 through 2014, and 2013 through 2015) we found no monitors violating the 2010 NO₂ NAAQS in the US.

We are also proposing to approve the portion of the submittal related to the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants, including GHG, which prevents significant deterioration in nearby states. In addition, on December 28, 2011 we finalized a FIP that in combination with the controls required by the portion of the Oklahoma Regional Haze (RH) submittal approved in the same rulemaking, would serve to prevent sources in Oklahoma from emitting pollutants in amounts that would interfere with efforts to protect visibility in other states (see 76 FR 81728). On March 7, 2014, we withdrew the FIP and finalized our approval of the revised Oklahoma RH plan and interstate transport affecting visibility. Thus, the Oklahoma SIP includes provisions that satisfy the CAA interstate pollution abatement requirements of section 110(a)(2)(D)(i)(II) for the 2010 NO₂ NAAQS.

Ozone: At this time we are not taking action on the infrastructure submittal regarding the prevention of emissions which significantly contribute to nonattainment of the ozone NAAQS in other states, and interference with the maintenance of the ozone NAAQS in other states. We plan to act on this sub-element in a separate action.

We are proposing to approve the portion of the submittal addressing the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants (including GHG), which prevents significant deterioration in nearby states. In addition and as discussed earlier in this rulemaking, on March 7, 2014, we finalized our determination that Oklahoma's Regional Haze Implementation Plan Revision meets the CAA provisions concerning non-interference with programs to protect visibility in other states, consistent with

section 110(a)(2)(D)(i)(II) of the CAA (see 79 FR 12944). Thus, the Oklahoma SIP includes provisions that satisfy the CAA interstate pollution abatement requirements of section 110(a)(2)(D)(i)(II) for the 2008 ozone NAAQS.

Sulfur Dioxide: At this time we are not taking action on the infrastructure submittal regarding the prevention of emissions which significantly contribute to nonattainment of the SO₂ NAAQS in other states, and interference with the maintenance of the SO₂ NAAQS in other states (prongs 1 and 2). We are also not taking action on the portion of the submittal addressing visibility protection (prong 4). We plan to act on these three sub-elements in a separate action.

We are proposing to approve only the sub-element addressing the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants (including GHG), which prevents significant deterioration in nearby states.

(D)(ii) Interstate Pollution Abatement and International Air Pollution: Pursuant to section 110(a)(2)(D)(ii), states must comply with the requirements listed in sections 115 and 126 of the CAA which were designed to aid in the abatement of interstate and international pollution. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. Oklahoma's PSD program contains the element pertaining to notification of neighboring states of the issuance of PSD permits. Section 115 relates to international pollution abatement. There are no findings by EPA that air emissions originating in Oklahoma affect other countries. Thus, the Oklahoma SIP satisfies the requirements of section 110(a)(2)(D)(ii) for the four NAAQS discussed herein.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as explained in section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Sections 110(a)(2)(A) and (C), discussed earlier in this rulemaking, also require that the state have adequate authority to implement and enforce the SIP without legal impediments. The State's submittals describe the Oklahoma statutes and SIP regulations governing the various functions of personnel within the ODEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. See the TSD for further detail.

With respect to funding, the OCAA and the SIP provide the ODEQ with authority to hire and compensate employees; accept and administer grants or other funds; require the ODEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the ODEQ to collect additional fees necessary to cover reasonable costs associated with processing air permit applications. The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP.

As required by the CAA, the Oklahoma statutes and the SIP stipulate that any board or body that approves permits or enforcement orders must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders; and the members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

Oklahoma has not delegated authority to implement any of the provisions of its plan to local governmental entities—the ODEQ acts as the primary air pollution control agency.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require 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 sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

¹⁴ See <https://www.epa.gov/air-trends/air-quality-design-values#Design Value Reports> and the docket for this rulemaking.

The OCAA and SIP require stationary sources to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved State regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions.¹⁵ The ODEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

(G) *Emergency authority:* The SIP must provide the ODEQ with authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement the ODEQ's emergency authority.

The OCAA provides the ODEQ with authority to address environmental emergencies. The ODEQ has an "Emergency Episode Plan," which includes contingency measures and these provisions are in the SIP (see 56 FR 5656, February 12, 1991). The ODEQ has general emergency powers to address any possible dangerous air pollution episode if necessary to protect the environment and public health.

(H) *Future SIP revisions:* States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS. The OCAA authorizes the ODEQ to revise the Oklahoma SIP as necessary, to account for revisions to an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP

calls concerning NAAQS adoption or implementation.

(I) *Nonattainment areas:* Section 110(a)(2)(I) of the Act requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. There are no areas designated as nonattainment in Oklahoma. In addition, as noted earlier, EPA believes that nonattainment area requirements should be treated separately from the infrastructure SIP requirements. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on any part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

(J) *Consultation with government officials, public notification, PSD and visibility protection:* The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation; (2) section 127 relating to public notification of NAAQS exceedances and related issues; and, (3) prevention of significant deterioration of air quality and visibility protection.

(1) *Interagency consultation:* As required by the OCAA and the Oklahoma SIP, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons must be given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, and to examine the testimony of witnesses from the hearing. In addition, the OCAA provides the ODEQ the power and duty to advise, consult and cooperate with other agencies of the State, towns, cities, counties, industries, other states, and the federal government regarding the prevention and control of new and existing air contamination sources in the State. Furthermore, the Oklahoma PSD SIP rules mandate that the ODEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the ODEQ to

consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program, and the State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a major new or modifying source prior to the submission of a permit application.

(2) *Public Notification:* The ODEQ regularly notifies the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for ODEQ to advise the public of the health hazard associated with such exceedances, enhance public awareness of measures that can prevent such exceedances, and inform the public on how it can participate in regulatory and other efforts to improve air quality. In addition, as described in the discussion of section 110(a)(2)(B) earlier in this rulemaking, the ODEQ air monitoring Web site provides quality data for each of the monitoring stations in Oklahoma; this data is provided instantaneously for certain pollutants, such as ozone. The Web site also provides information on the health effects of all six criteria pollutants.

(3) *PSD and Visibility Protection:* The PSD requirements for this element are the same as those addressed under 110(a)(2)(C) earlier in this rulemaking—the State has a SIP-approved PSD program, so this requirement has been met. The Oklahoma SIP requirements relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the Pb and ozone NAAQS in 2008, and the NO₂ and SO₂ NAAQS in 2010, and consequently there are no newly applicable visibility protection obligations here.

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The ODEQ has the authority and duty under the OCAA to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, the ODEQ has the ability

¹⁵ A list of such rules and SIP approval dates are provided in Table 4 of the TSD.

to perform modeling for the NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and EPA guidance. Furthermore, the OCAA empowers the ODEQ to cooperate with the federal government and others concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

(L) *Permitting Fees:* The SIP must require each major stationary source to pay permitting fees to the permitting authority as a condition of any permit required under the CAA. The fees cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement

applies until such a time when a fee program is established by the state pursuant to Title V of the CAA, and is submitted to and is approved by EPA. The State has met this requirement as it has a fully developed fee system in place and approved in the SIP. See also the discussion of section 110(a)(2)(E) earlier in this rulemaking action.

(M) *Consultation/participation by affected local entities:* The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the discussion of section 110(a)(2)(J)(1) and (2) earlier in this rulemaking for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP public participation

requirements. Additionally, the OCAA requires cooperative action between itself and other agencies of the State, towns, cities, counties, industry, other states, affected groups, and the federal government in the prevention and control of air pollution.

III. Proposed Action

EPA is proposing to approve in part the October 5, 2012, February 28, 2014 and January 28, 2015, infrastructure SIP submissions from Oklahoma, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Table 1 outlines the specific actions we are proposing to take.

TABLE 1—PROPOSED ACTION ON OKLAHOMA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

110(a)(2) Element	2008 ozone	2008 Pb	2010 NO ₂	2010 SO ₂
(A): Emission limits and other control measures	PR	PR	PR	PR
(B): Ambient air quality monitoring and data system	PR	PR	PR	PR
(C)(i): Enforcement of SIP measures	PR	PR	PR	PR
(C)(ii): PSD program for major sources and major modifications	PR	PR	PR	PR
(C)(iii): Permitting program for minor sources and minor modifications	PR	PR	PR	PR
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (requirements 1 and 2)	SA	PR	PR	SA
(D)(i)(II): PSD (requirement 3)	PR	PR	PR	PR
(D)(i)(II): Visibility Protection (requirement 4)	PR	PR	PR	SA
(D)(ii): Interstate and International Pollution Abatement	PR	PR	PR	PR
(E)(i): Adequate resources	PR	PR	PR	PR
(E)(ii): State boards	PR	PR	PR	PR
(E)(iii): Necessary assurances with respect to local agencies	PR	PR	PR	PR
(F): Stationary source monitoring system	PR	PR	PR	PR
(G): Emergency power	PR	PR	PR	PR
(H): Future SIP revisions	PR	PR	PR	PR
(I): Nonattainment area plan or plan revisions under part D	NG	NG	NG	NG
(J)(i): Consultation with government officials	PR	PR	PR	PR
(J)(ii): Public notification	PR	PR	PR	PR
(J)(iii): PSD	PR	PR	PR	PR
(J)(iv): Visibility protection	PR	PR	PR	PR
(K): Air quality modeling and data	PR	PR	PR	PR
(L): Permitting fees	PR	PR	PR	PR
(M): Consultation and participation by affected local entities	PR	PR	PR	PR

Key to Table 1:

NG—Element is not germane to infrastructure SIPs.

PR—Proposing to approve in this action.

SA—Acting on this infrastructure requirement in a separate rulemaking.

Based upon review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Oklahoma SIP, we believe Oklahoma has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except as noted in Table 1) to ensure that the 2008 Pb, 2008 Ozone, 2010 NO₂, and 2010 SO₂ NAAQS are implemented in the State.

IV. 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 action merely proposes to approve 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 13, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–22560 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

Office of Inspector General

42 CFR Part 1007

RIN 0936–AA07

Medicaid; Revisions to State Medicaid Fraud Control Unit Rules

AGENCIES: Office of Inspector General (OIG) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation governing State Medicaid Fraud Control Units (MFCUs or Units). The proposed rule would incorporate statutory changes affecting the MFCUs as well as policy and practice changes that have occurred since the regulation was initially issued in 1978. These changes include a codification of OIG's delegated authority, MFCU authority, functions, and responsibilities; disallowances; and issues related to organization, prosecutorial authority, staffing, recertification, and the MFCUs' relationship with Medicaid agencies.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. Eastern Standard Time on November 21, 2016.

ADDRESSES: In commenting, please reference file code OIG–406–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. However, you may submit comments using one of two ways (no duplicates, please):

1. *Electronically.* We strongly encourage you to submit your comments via the Internet. You may submit electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* Because of potential delays in our receipt and processing of mail, we encourage respondents to submit comments electronically to ensure timely receipt. However, you may mail your printed or written submissions to the following address:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–406–

P, Cohen Building, 330 Independence Avenue SW, Room 5269, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period. Comments received after the end of the comment period may not be considered.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on <http://www.regulations.gov> for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201, Monday through Friday from 10 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

FOR FURTHER INFORMATION CONTACT:

Susan Burbach, (202) 708–9789 or Richard Stern, (202) 205–0572, Office of Inspector General, for questions relating to the proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for Regulatory Action

We propose to amend this regulation for two reasons. First, we want to incorporate into the rule the statutory changes that have occurred since the 1977 enactment of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142), which amended section 1903(a) of the Social Security Act (the Act) to provide for Federal participation in the costs attributable to establishing and operating a State Medicaid Fraud Control Unit (MFCU or Unit). Second, we want to align the rule with practices and policies that have developed and evolved since the initial version of the rule was issued in 1978, 43 FR 32078 (July 24, 1978), codified at 42 CFR part 1007. Because of the extensive nature of our proposal, we have republished the entirety of part 1007 and incorporated our proposed changes as part of that publication. However, for some sections within part 1007, we are not proposing substantive changes.

B. Legal Authority

The legal authority for this regulatory action is found in the Act as follows: 1007: SSA §§ 1902(a)(61), 1903(a)(6), 1903(b)(3), 1903(q), and 1102. 455: SSA §§ 1902(a)(4), 1903(i)(2), 1909.

C. Summary of Major Provisions

(1) *Statutory Changes.* We propose to incorporate statutory changes that have occurred since 1977, including (1)