IV. Summary of Proposed Actions

EPA is proposing to disapprove revisions and new rules as identified in this action and as submitted by the State of Montana on October 16, 2006 and November 1, 2006. EPA is proposing disapproval based upon a number of factors, including: (1) The lack of any objective, replicable methodology in order to determine compliance, (2) the lack of sufficient MRR requirements, and (3) the lack of enforceability. Additionally, EPA lacks sufficient information to determine that the requested revision to add the new oil and gas registration program to the Montana Minor NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) as required by CAA Section 110(l), or any other requirement of the Act. Finally, EPA also lacks sufficient information to make a finding that the submitted Program will ensure protection of the NAAQS, PSD increments, and noninterference with the Montana SIP control strategies.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, New Source Review, Minor New Source Review, Permitting, Incorporation by reference.

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

Dated: December 22, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–18 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0839; FRL–9248–7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Kansas Section 110 State Implementation Plan for Interstate Transport for the 1997 National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA), EPA is proposing to find that the Kansas State Implementation Plan (SIP) is substantially inadequate to satisfy the CAA requirement to address Kansas' significant contribution to downwind nonattainment or interference with maintenance in another State with respect to the 1997 National Ambient Air Quality Standards (NAAQS) for ozone. The specific State Implementation Plan deficiencies that EPA has identified are described in this proposal and in the proposed Federal Implementation Plan To Reduce Interstate Transport of Fine Particulate Matter and Ozone. If EPA finalizes this proposed finding of substantial inadequacy, Kansas will be required to revise its SIP to correct these deficiencies no later than 12 months following the date of signature of the final finding of substantial inadequacy.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0839, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: kramer.elizabeth@epa.gov.*
3. *Mail:* Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0839. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What is the basis for the proposed SIP Call?

EPA previously issued findings that certain States had failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 ozone and fine particle ($PM_{2.5}$) standards (70 FR 21147, April 25, 2005). These findings started a 2-year clock for the promulgation of a FIP by EPA unless, prior to that time, each State made a submission to meet the requirements of 110(a)(2)(D)(i) and EPA approved the submission. This 2-year period expired in May 2007. EPA promulgated the Clean Air Interstate Rule (CAIR) on May 12, 2005, (*see* 70 FR 25162). CAIR required States to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the NAAQS for $PM_{2.5}$ and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(d)(i)(I) obligations.

For States that were in the CAIR region, EPA determined that the 110(a)(2)(D)(i)(I) SIP requirements were addressed by CAIR and the CAIR FIPs. However, the CAIR region did not include the State of Kansas. Therefore, Kansas was required to submit a SIP revision independent of CAIR to address interstate transport under 110(a)(2)(D)(i)(I).

On August 15, 2006, EPA issued guidance for SIP submissions addressing the requirements of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and ozone NAAQS.[1] To satisfy the section 110(a)(2)(D)(i)(I) requirement, on January 9, 2007, the State of Kansas submitted to EPA a declaration that the State does not contribute significantly to projected downwind ozone nonattainment, or interfere with maintenance in the year 2010, and provided a technical demonstration to support their negative declaration. On March 9, 2007, EPA approved the Kansas Department of Health and Environment's (KDHE) submittal to address CAA Section 110(a)(2)(D)(i).[2]

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

EPA approved KDHE's SIP prior to the remand of the CAIR by the DC Circuit. The remand of CAIR had no impact on EPA's approval of the KDHE's SIP submission to satisfy the requirements of CAA Section 110(a)(2)(D)(i)(I).

On July 6, 2010, the Administrator signed a proposed Federal Implementation Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Transport Rule) to replace CAIR in response to the court's ruling.[3] The updated modeling in support of the proposed Transport Rule responding to the remand of CAIR demonstrates that emissions from Kansas do interfere with maintenance of the 1997 8-hour ozone NAAQS in downwind areas.[4] The previously approved Kansas SIP did not adequately address emissions. Therefore, based on the modeling used to support the proposed Transport Rule, which was not available at the time Kansas prepared and EPA approved the SIP submission, EPA proposes to find that the SIP revision approved on March 7, 2007, is substantially inadequate pursuant to 110(a)(2)(D)(i)(I).

II. How can Kansas correct the inadequacy and when must the correction be submitted?

To correct the deficiency, KDHE must submit a revised SIP that contains adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour ozone NAAQS in other downwind States. The SIP revision must contain measures that ensure that sources in Kansas reduce their NO_X emissions sufficiently to

[1] Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," August 15, 2006.

[2] 72 FR 10608, March 9, 2007.

[3] *See* 75 FR 45210 (August 2, 2010), "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone".

[4] *See* Transport Rule proposal at 75 FR 45267–45268.

eliminate the NO_X emissions that contribute significantly to nonattainment, or that interfere with maintenance of the 1997 ozone standard, downwind. By eliminating those NO_X emissions, the control measures will assure that the remaining NO_X emissions will meet the level identified in the proposed Transport Rule as the State's ozone season NO_X emission budget.

Section 110(k)(5) of the CAA provides that after EPA makes a finding that a plan is substantially inadequate, it may establish a reasonable deadline for correcting the deficiencies, but the date cannot be later than 18 months after the State is notified of the finding.

EPA intends to finalize the SIP Call in early summer of 2011. We propose to allow the State 12 months from the date of the notice, which will be the date on which we sign the final action, to submit the SIP revision, unless, during the comment period, the State expressly advises that it would not object to a shorter period—as short as 3 weeks from the date of signature of the final in which case we would establish the shorter period as the deadline. If the Administrator signs the notice on or about May 1, 2011, the earliest possible deadline would be three weeks from the date of signature. The purpose of establishing the shorter period as the deadline—assuming that the State advises us that it does not object to that shorter period—is to allow Kansas to use the FIP under the proposed Transport Rule to satisfy this SIP deficiency in an expedited manner. This would allow Kansas sources the ability to use the same remedy available to sources affected by the Transport Rule, within the same time period which EPA recommends. If the State does not advise us that it does not object to a shorter deadline, then the 12-month deadline would apply.

EPA proposes that this 3-week-to-12-month time period, although expedited, meets the CAA 110(k)(5) requirement as a "reasonable deadline" and we welcome comment on this interpretation. The term "reasonable deadline," as it appears in that provision, is not defined. We interpret it to mean a time period that is sensible or logical, based on all the facts and circumstances. Those facts and circumstances include (i) the State SIP development and submission process, (ii) the ability for sources in Kansas to address emission reductions using the same remedy and timing as other sources in the proposed Transport Rule; and (iii) the preferences of the State. The following elaborates on those three facts and circumstances.

First, although the 12-month period is consistent with the time period required for SIP revisions in at least one previous SIP call that EPA issued, the NO_X SIP Call,[5] we recognize that a period shorter than 12 months is expedited in light of the time involved in most State SIP development and submission processes. In particular, we recognize that Kansas would need to undertake rulemaking actions, which would be time-consuming. Although this is a matter of State process, we are prepared to continue to work with Kansas to develop expedited methods for developing, processing, and submitting a SIP revision.

Second, providing the opportunity for sources in Kansas to address emission reductions using the same remedy and timing as other sources in the proposed Transport Rule is a significant consideration. Prescribing a shorter period for Kansas to address the SIP deficiency would mean that sources in Kansas could take advantage of the same remedy provided to other sources affected by the Transport Rule.

Finally, the preference of Kansas is important because the deadline for submittal of the corrective SIP revision in response to a SIP Call acts as a burden on the State. If Kansas does not object to an earlier deadline under which it must operate—which, in a sense, is contrary to the State's self-interest because an earlier deadline typically increases burdens—then that is an indication of the reasonableness of the deadline.

In the case where the State fails to make a timely and responsive SIP submittal, a finding that the State failed to submit the required SIP revision would trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the finding, if the deficiency has not been corrected, and EPA has not approved a plan revision. The proposed Transport Rule, when finalized, is the FIP that EPA intends to implement for Kansas to fulfill the section 110(a)(2)(D)(i)(I) FIP obligation in the event the State fails to submit an adequate SIP revision. EPA intends for the Transport Rule FIP to be implemented sooner than 2 years from any such final finding.

In addition, if EPA finalizes this SIP Call by determining that the existing SIP is substantially inadequate, and if the State subsequently fails to provide a timely response to the SIP Call, the CAA provides for EPA to issue a finding of State failure under section 179(a). Such a finding normally starts an 18-month mandatory sanctions clock. However, as is made clear in the order of sanctions rule, (40 CFR 52.31), the section 179 mandatory sanctions apply only in nonattainment areas. See, 59 FR 39832 (August 4, 1994). Kansas has no areas designated as nonattainment for the 1997 ozone NAAQS. Therefore, EPA believes that the section 179 mandatory sanctions would not apply in Kansas as a result of any planning failure associated with the SIP Call proposed in this action.

It should also be noted that EPA does not intend to finalize this SIP Call if the Final Transport Rule modeling does not show that emissions from Kansas are contributing significantly to nonattainment or interfering with maintenance of the 1997 8-hour ozone NAAQS in downwind areas.

III. What action is EPA proposing?

EPA proposes the following actions relating to the Kansas interstate transport SIP: (1) Find the SIP is substantially inadequate to address the interstate transport of NO_X and the ozone that it forms in the atmosphere that contribute significantly to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in downwind States; (2) require that Kansas revise the SIP to address the requirements of section 110(a)(2)(D)(i)(I); (3) require the State to submit revisions to the SIP within 12 months of the final finding or an alternative deadline; (4) determine that the section 179 mandatory sanctions would not be implicated by this action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, a finding of substantial inadequacy and subsequent obligation for a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, 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);

[5] *See* 63 FR 57356, (October 27, 1998). "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule."

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

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

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

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

Statutory Authority

The statutory authority for this action is provided by sections 110 and 301 of the CAA, as amended (42 U.S.C. 7410 and 7601).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution, Ozone, Kansas, State Implementation Plan.

Dated: December 27, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–15 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1034, 1102, 1104, and 1115

[Docket No. EP 697]

Amtrak Emergency Routing Orders

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to establish regulations governing the issuance of emergency routing orders upon application of the National Railroad Passenger Corporation (Amtrak). Pursuant to 49 U.S.C. 24308(b), the Board has statutory authority to require rail carriers to provide facilities immediately when necessary for the movement of Amtrak trains when Amtrak cannot operate its trains via normal routings due to rail line closures or other emergencies.

DATES: Comments are due by February 7, 2011. Reply comments are due by February 22, 2011.

ADDRESSES: Information or questions regarding this proposed rule should reference Docket No. EP 697 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Gabriel S. Meyer at 202–245–0389. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board proposes to establish regulations governing the issuance of emergency routing orders upon application of the National Railroad Passenger Corporation (Amtrak). The rules will be codified at 49 CFR parts 1011, 1034, 1102, 1104, and 1115.

Amtrak is a government-owned corporation that operates intercity passenger trains on an approximately 21,000-mile rail network, serving 46 States and 3 Canadian provinces. During its 2010 fiscal year, Amtrak carried more than 28 million passengers. With the exception of certain rail lines located primarily in the northeastern United States, Amtrak does not own the lines over which its trains operate. Most of the lines Amtrak uses are owned and operated by freight railroads, which are subject to the Board's jurisdiction.

Periodically, an established Amtrak route becomes blocked or closed as the result of a derailment, unscheduled maintenance, severe weather, or other emergency. In these circumstances, if an alternate rail routing exists, Amtrak may seek to detour its trains around the blockage using the alternate route. If no alternate route is available, Amtrak may be forced to suspend train operations.

In most emergency rerouting situations, Amtrak reaches a voluntary agreement governing the terms of its use with the rail carrier that owns the alternate route. Occasionally, however, Amtrak is unable to reach an agreement. In this event, Amtrak may seek relief from the Board as provided by the statute:

* * * * *

Operating During Emergencies.—To facilitate operation by Amtrak during an emergency, the Board, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Board then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

* * * * *

49 U.S.C. 24308(b).

Currently, there are no Board rules establishing procedures for Amtrak to obtain the relief authorized by the statute.[1] The Board therefore proposes revising its rules to remove uncertainty regarding Amtrak emergency routing order applications. The proposed rules are set forth in this decision and are discussed below.

Delegations of Authority

Section 1011.4(a)(10): Under the proposed rules, authority to issue Amtrak emergency routing orders is delegated to the Chairman of the Surface Transportation Board (Chairman). The Board proposes adding this delegation of authority to others already contained

[1] A Board order served on February 23, 1996 (*Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains*) (no docket number), named an agent of the Board, who was vested with authority to issue orders requiring railroads to make their facilities immediately available to Amtrak during emergencies. This continued a past practice of vesting, in named individuals, authority to issue such emergency orders. The agent named in the 1996 decision has since retired. As a result, the Board is revising its procedures for Amtrak emergency routing order requests. The Board has rarely had to issue Amtrak emergency routing orders. It last issued one in 1997. *STB Passenger Train Operation No. 123,* STB served Aug. 12, 1997 (no docket number).