

newly created Chapter 468A entitled "Air Quality". Chapter 468A was created for those statutes specific to air quality. Also, the title for Chapter 468 was changed from "Pollution Control" to "Environmental Quality Generally".

Section 2.2—Legal Authority. This section of the SIP discusses the legal basis upon which Oregon's Environmental Quality Commission establishes policy for the operation of ODEQ and upon which ODEQ functions to control, prevent and abate air pollution in Oregon. This section also contains the statutes upon which Oregon's legal authority to regulate air pollutants is based.

On August 30, 1994, the State of Oregon submitted to EPA another revision to Chapters 468 and 468A of the ORS. These revised chapters include statutes amended or adopted by the Oregon Legislature through August, 1993, and became state effective on November 4, 1993.

Because the August 30, 1994, submittal supersedes the 1992 submittal of Chapters 468 and 468A, EPA is taking action on the 1994 submittal of the chapters and the 1992 submittal of Section 2.2—Legal Authority in this document.

The August 30, 1994, submittal includes the following provisions in ORS Chapter 468: General Administration—sections 468.005 through 468.075, Enforcement—sections 468.090 to 468.140, and Pollution Control Facilities Tax Credit—sections 468.150 to 468.190. ORS Chapter 468A contains the following provisions: Air Pollution Control—sections 468A.005 to 468A.085, Regional Air Quality Control Authorities—sections 468A.100 to 468A.180, Small Business Stationary Source Technical and Environmental Compliance Assistance Program—section 468A.330, Motor Vehicle Pollution Control—sections 468A.350 to 468A.455, Woodstove Emissions Control—sections 468A.460 to 468A.520, and Field Burning and Propane Flaming—sections 468A.550 to 468A.620.

In this document, EPA approves the above statutes, except for ORS 468A.075 and ORS 468A.330, as meeting the requirements of section 110(a)(2)(E) of the CAA and 40 CFR part 51, subpart L—Legal Authority. EPA is not acting on ORS 468A.075 and ORS 468A.330 in this **Federal Register** document. Section 110(a)(2)(E) requires, among other things, that a SIP provides assurance that a state has adequate authority under state law to carry out SIP requirements (and is not prohibited by any provision of Federal or State law from carrying out

such implementation plan or portion thereof).

As discussed in Section 2.2 of the SIP, ODEQ recognizes that EPA has not previously approved, nor will EPA now approve, statutes or regulations for variances as revisions to the SIP. ORS 468A.075 provides the authority for the state to grant variances from air contamination rules and standards. However, since SIP rules and standards are relied upon to attain and maintain the National Ambient Air Quality Standards (NAAQS), and because any relaxation of a SIP requirement would require a SIP revision, and only EPA can approve a revision, it is not appropriate for EPA to approve the state's authority to grant variances into the SIP.

It should be noted that even if the state grants a source specific variance to a SIP limit, EPA is not precluded from enforcing the federally approved SIP limit. Thus, granting of a variance by the state does not change the federally enforceable and approved SIP limit.

EPA is also not acting on ORS 468A.330. This section authorizes the state to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP) in accordance with section 507 of the CAA. The statute, in conjunction with the SBAP, will be reviewed and acted on at a later date.

All measures and other elements in a SIP must be enforceable by ODEQ and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541).

During review of the 1992 submittal, EPA determined that the Oregon Revised Statute Chapter 468, as amended in 1991, bars civil penalties from being imposed for certain stationary source permit violations. Specifically, ORS 468.126(1) provided that penalties could not be assessed against a source for permit violations unless the state first provided notice of the violation to the source, and further, if within five days, the source came into compliance or provided an adequate schedule to come into compliance in the future, no penalties could be assessed. EPA informed the Oregon Department of Environmental Quality that this provision was unacceptable to the extent it applied to permit limits which were specified in the SIP and were relied on to attain, maintain or demonstrate attainment with a NAAQS.

On September 3, 1993, the Governor of Oregon signed into law new

legislation correcting this deficiency. The new law provides that the five-day advance notice provision required by ORS 468.126(1) does not apply if the notice requirement would disqualify a state program from federal approval or delegation (see ORS 468.126(2)(e)).

The state has acknowledged, by a letter dated November 5, 1993, that, pursuant to ORS 468.126(2)(e), the notice provision in ORS 468.126(1) will not apply to violations of SIP requirements contained in permits, including permits containing industrial source control requirements, relied upon to attain, maintain, or demonstrate attainment with a NAAQS. Therefore, EPA is approving this provision into the SIP. Its application to non-SIP items that are specified in a permit will be separately reviewed in conjunction with any submitted permit program.

II. This Action

EPA approves the July 29, 1992, submittal revising Section 2.2—Legal Authority of the Oregon SIP. EPA also approves the August 30, 1994, submittal revising ORS Chapters 468 and 468A, except for ORS 468A.075 and ORS 468A.330. This revision of the ORS became state effective November 4, 1993.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).