

(3) Rule 1309.1, adopted on May 3, 2002.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R10-OAR-2006-0010; FRL-8179-5]

### Approval and Promulgation of Air Quality Implementation Plans; Lakeview PM10 Maintenance Plan and Redesignation Request

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

**ACTION:** Final rule.

**SUMMARY:** On March 22, 2006, EPA published a direct final rule to approve a PM10 State Implementation Plan (SIP) maintenance plan revision for the Lakeview, Oregon nonattainment area and to redesignate the area from nonattainment to attainment for PM10. PM10 air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. We stated in the direct final rule that if EPA received adverse comment, we would publish a timely withdrawal of the direct final rule. We received adverse comment on the direct final rule, and, therefore, in a separate action, are withdrawing our direct final rule. In a parallel notice of proposed rulemaking, also published on March 22, 2006, we stated that if we received adverse comments we would address all public comments in a subsequent final rule based on the proposed rule. This final action addresses the adverse comments we received and finalizes our approval of the SIP revision and redesignation request for the Lakeview PM10 nonattainment area.

**DATES:** This final rule is effective July 19, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2006-0010. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard

copy at the EPA, Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Seattle WA. EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, Office of Air, Waste and Toxics (AWT-107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101; telephone number: (206) 553-6706; fax number: (206) 553-0110; e-mail address: [deneen.donna@epa.gov](mailto:deneen.donna@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used, we mean EPA.

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- I. What Is the Background of This Rulemaking?
- II. What Comments Did We Receive on the Proposed Action?
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- IV. Statutory and Executive Order Reviews

#### I. What Is the Background of This Rulemaking?

On October 25, 2005, the State of Oregon Department of Environmental Quality (DEQ or State) submitted a SIP revision and redesignation request for the Lakeview, Oregon PM10 nonattainment area. On March 22, 2006, EPA published a direct final rule to approve this SIP revision and request on the basis that the State's submission adequately demonstrated that the control measures being implemented in the Lakeview area result in maintenance of the PM10 National Ambient Air Quality Standards (NAAQS) and all other requirements of the Clean Air Act (the Act) for redesignation to attainment are met. 71 FR 14399. We stated in the direct final rule that if EPA received adverse comment, we would publish a timely withdrawal of the direct final rule. We received adverse comment on the direct final rule, and, therefore, in a separate action, are withdrawing our direct final rule. In a parallel notice of proposed rulemaking, also published on March 22, 2006, we stated that if we received adverse comments we would address all public comments in a subsequent final rule based on the proposed rule. 71 FR 14438. This final action addresses the adverse comments we received and finalizes our approval of the State's SIP revision and redesignation request for the Lakeview PM10 nonattainment area.

#### II. What Comments Did We Receive on the Proposed Action?

We received one comment on the proposed rulemaking. This comment was from the Oregon Division of the Federal Highway Administration (FHWA). FHWA's comment and our response are summarized as follows:

*Comment:* The commenter expressed concern that the language stating that "the motor vehicle emissions budget is established for all years" could be interpreted to mean that a budget for Lakeview is created for each year, 2006 through 2017. The commenter added that since transportation conformity requires a demonstration of meeting budgets for every year a budget is established, requiring the Department of Transportation to demonstrate meeting a budget for each year through 2017 seems to be overly burdensome and return little value. The commenter concluded that demonstrating that the 2017 budget is met, as well as any required interim years, meets the purpose of the Clean Air Act and this SIP.

*Response:* EPA's statement that the motor vehicle emissions budget is established for all years is in the preamble to our rulemaking at 71 FR 14404 (March 22, 2006). Because this statement is based on information in the State's SIP submittal, we asked DEQ to clarify the period for which the motor vehicle emissions budget is established. In a letter to EPA, dated May 2, 2006, DEQ clarified that the motor vehicle emissions budget is established for the Lakeview PM10 nonattainment area for 2017 and that DEQ never intended to require a yearly transportation conformity analysis. DEQ added that analysis years are determined by the conformity rule and through interagency consultation and that DEQ does not believe that its language could be, or should be, interpreted to mean that an analysis must be conducted every year. The phrase "for all years" makes clear that if, as a result of conformity rules and interagency consultation, an intervening year conformity determination is required or needed, then the budget established for 2017 governs.

Based on the comment from FHWA, the clarifying letter from DEQ, the SIP revision for the Lakeview PM10 nonattainment area, and 40 CFR 93.118(b)(2)(i), which sets the minimum years for which a regional emissions analyses must be conducted, we are clarifying that the motor vehicle emissions budget for Lakeview is established for 2017. Accordingly, the

motor vehicle emissions budget for Lakeview is as follows:

**LAKEVIEW PM10 MOTOR VEHICLE  
EMISSIONS BUDGET FOR 2017**  
[Pounds PM10/24-hour winter day]

Year .....	2017
Motor Vehicle Emissions Budget	311

### III. What Is Our Final Action?

EPA is taking final action to approve a PM10 State Implementation Plan (SIP) maintenance plan revision for the Lakeview, PM10 nonattainment area and to redesignate the area from nonattainment to attainment for PM10. EPA is approving the SIP revision and redesignation request because the State adequately demonstrates that the control measures being implemented in the Lakeview area result in maintenance of the PM10 National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by August 18, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects

#### 40 CFR Part 52

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

#### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 23, 2006.

**Richard B. Parkin,**

*Acting Regional Administrator, Region 10.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

### Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(147) to read as follows:

#### § 52.1970 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(147) On October 25, 2005, the Oregon Department of Environmental Quality submitted a PM10 maintenance plan and requested redesignation of the Lakeview PM10 nonattainment area to attainment for PM10. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) The following sections of Oregon Administrative Rule 340: 204-0030, 204-0040, 224-0060 (2)(d) and 225-0020(8), as effective September 9, 2005.

■ 3. Section 52.1973 is amended by adding paragraph (e)(4) to read as follows:

#### § 52.1973 Approval of plans.

\* \* \* \* \*

(e) \* \* \*

(4) EPA approves as a revision to the Oregon State Implementation Plan, the Lakeview PM10 maintenance plan adopted by the Oregon Environmental Quality Commission on August 11, 2005 and submitted to EPA on October 25, 2005.

\* \* \* \* \*

**PART 81—[AMENDED]**

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. In § 81.338, the table entitled “Oregon PM–10” is amended by

revising the entry for “Lakeview (the Urban Growth Boundary Area)” to read as follows:

**§ 81.338 Oregon.**

\* \* \* \* \*

**OREGON—PM–10**

Designated area	Designation		Classification	
	Date	Type	Date	Type
Lakeview (the Urban Growth Boundary area) .....	7/19/06	Attainment.		

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA–R10–OAR–2006–0050; FRL–8179–4]

**Approval and Promulgation of Air Quality Implementation Plans; La Grande PM10 Maintenance Plan and Redesignation Request**

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

**ACTION:** Final rule.

**SUMMARY:** On March 22, 2006, EPA published a direct final rule to approve a PM10 State Implementation Plan (SIP) maintenance plan revision for the La Grande, Oregon nonattainment area and to redesignate the area from nonattainment to attainment for PM10. PM10 air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. We stated in the direct final rule that if EPA received adverse comment, we would publish a timely withdrawal of the direct final rule. We received adverse comment on the direct final rule, and, therefore, in a separate action, are withdrawing our direct final rule. In a parallel notice of proposed rulemaking, also published on March 22, 2006, we stated that if we received adverse comments we would address all public comments in a subsequent final rule based on the proposed rule. This final action addresses the adverse comments we received and finalizes our approval of the SIP revision and redesignation request for the La Grande PM10 nonattainment area.

**DATES:** This final rule is effective July 19, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2006–0050. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA, Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle WA. EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding legal holidays.

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