

**Subpart VV—Virginia**

2. Section 52.2420 is amended by adding paragraph (c)(129) to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(129) Revisions to the Virginia Regulations pertaining to permit requirements for new and modified stationary sources locating in nonattainment areas mandated under Title I, Sections 171–173 and 182 of the Clean Air Act submitted on November 9, 1992, by the Commonwealth of Virginia:

(i) Incorporation by reference.

(A) Letter of November 9, 1992, from the Commonwealth of Virginia, Department of Air Pollution Control transmitting revisions to the Virginia Regulations pertaining to permit requirements for new and modified stationary sources locating in nonattainment areas.

(B) Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, *Permits for Stationary Sources*, Section 120–08–03. “Permits—Major Stationary Sources and Major Modifications Locating in Nonattainment Areas”. (Effective January 1, 1993).

(ii) Additional materials—The remainder of the November 2, 1992 submittal pertaining to Regulation 120–08–03.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR PART 52**

[Docket #OR55–7270; FRL–6438–5]

**Approval and Promulgation of Implementation Plans; Oregon**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** Environmental Protection Agency (EPA) approves revisions to the Oregon State Implementation Plan. The Lakeview, Oregon PM10 Control Plan is intended to bring about the attainment of National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM10). The implementation plan was submitted to satisfy Federal requirements for moderate PM10 nonattainment areas.

**DATES:** This direct final rule is effective on November 22, 1999, without further notice, unless EPA receives adverse comment by October 21, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

**FOR FURTHER INFORMATION CONTACT:**

Tracy Oliver, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Ave, Seattle, Washington, 98101, (206) 553–1388.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Applicable PM10 Standard and Initial Area Designations**

The Clean Air Act<sup>1</sup> (Act) requires EPA to reevaluate the health-based National Ambient Air Quality Standards (NAAQS) every five years to consider changes based on new scientific information. On July 1, 1987, EPA revised the particulate matter NAAQS to reflect new evidence that smaller particles pose an increased threat to human health and the environment (52 FR 24634). Upon revision, PM10 was selected as the new indicator for particulates.

EPA replaced the old total suspended particulate (TSP) standard with new primary and secondary standards for PM10. The new 24-hour primary and secondary standard for PM10 was set at 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) with no more than one allowable exceedance per year within a three-year time frame. The new annual PM10 standard was set at 50  $\mu\text{g}/\text{m}^3$  expected

annual arithmetic mean with no allowable exceedances.

Concurrent with the new standards, EPA promulgated revisions to 40 CFR parts 51 and 52 and implementation guidance for PM10 NAAQS (52 FR 24672). These revisions to 40 CFR Parts 51 and 52 established requirements for the preparation, adoption, and submittal of State Implementation Plans (SIPs) and set forth requirements for the Administrator's approval and promulgation of SIP revisions.

When Congress revised the Act on November 15, 1990, it codified the EPA's 1987 PM10 NAAQS revisions and designated PM10 areas under Section 107. This revision also changed SIP requirements for particulate matter (PM) nonattainment areas.<sup>2</sup>

The General Preamble for the implementation of Title I of the amended Act states that on the date of enactment, PM10 areas meeting the qualifications of Section 107(d)(4)(B) of the Act became nonattainment by operation of law. These areas included: (1) Areas with the greatest probability of violating the old PM standard (Class I areas in 52 FR 29383 and 55 FR 45799); and (2) other areas violating the PM10 NAAQS prior to January 1, 1989. All other PM areas were designated unclassifiable for PM10 (57 FR 13537).<sup>3</sup>

The amended Act, in accordance with Section 107(d)(3), authorizes EPA to promulgate the designation of new areas as nonattainment for PM10 based on air quality data, planning and control considerations, and/or any other air quality-related consideration that the Administrator deems appropriate.

On April 22, 1991, EPA announced in 56 FR 16274 that it had initiated the redesignation process for 16 areas. Other areas were subsequently redesignated on a case-by-case basis.

**B. Lakeview, Oregon Designation History**

By operation of law upon enactment of the 1990 Clean Air Act Amendments, Lakeview, Oregon was designated “unclassifiable” due to a lack of air quality monitoring data (see CAA section 107(d)(4)(B)(iii)).

The State of Oregon subsequently conducted monitoring in the Lakeview area to verify PM10 concentrations and

<sup>2</sup> Title 1, Subparts 1 and 4 contain revisions applicable to all nonattainment areas and those specific to PM10 nonattainment areas. At times, these provisions overlap or conflict. Because EPA is describing its interpretations here in broad terms, the reader should refer to the General Preamble (57 FR 13498) to better clarify the requirements that authorize this action.

<sup>3</sup> Procedures for area classification and attainment date determinations can be found in CAA section 188.

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended. The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C., Sections 7401, *et seq.*

determine if its designation status should be revised.

On December 29, 1992, the Governor of Oregon submitted a letter notifying EPA that the monitoring site in Lakeview had recorded an exceedance of the 24-hour PM10 NAAQS. Because monitors in the area had also recorded previous exceedances of the 24-hour PM10 NAAQS on January 4, 14, and 16, 1991, the exceedance in 1992 resulted in a violation of the 24-hour PM10 NAAQS.

The Governor requested that Lakeview be redesignated to nonattainment for PM10. Additionally, Oregon requested that the nonattainment area be defined as the Lakeview Urban Growth Boundary. EPA approved these requests and redesignated Lakeview as nonattainment for PM10 and classified it as moderate effective December 25, 1993 (58 FR 49931).

On June 1, 1995, the Governor submitted to EPA the Lakeview, Oregon PM10 Control Plan, Oregon's strategy for meeting the PM10 NAAQS as expeditiously as practicable. This revision to the Oregon SIP, herein referred to as the Lakeview Attainment Plan, is the subject of today's action.

### C. Attainment Plan Requirements for Moderate PM10 Nonattainment Areas

A moderate area PM10 attainment plan must include: (1) Provisions to assure that Reasonably Available Control Measures (RACM), including Reasonable Available Control Technology (RACT), are implemented within four years of redesignation; (2) a permit program meeting the requirements of Section 173 of the Act governing the construction and operation of new and modified stationary sources of PM10; (3) quantitative milestones demonstrating reasonable further progress achieved every three years until the area is redesignated to attainment (see CAA section 171(1)); and (4) a demonstration that the plan will provide for the attainment of the PM10 NAAQS as expeditiously as practicable within six years (or a demonstration that such a date is not practicable).<sup>4</sup>

The State is also required to submit contingency measures, pursuant to Section 172(c) of the Act. These additional controls take effect without further action if EPA determines that an area has failed to make reasonable further progress. Pursuant to today's

<sup>4</sup> See 57 FR 13498 and 57 FR 18070 for more detailed discussion of EPA guidance and statutory requirements applicable to moderate PM10 nonattainment areas.

action, the State of Oregon was required to submit contingency measures within 18 months of Lakeview's redesignation.

### D. Lakeview PM10 Attainment Plan Development

The Lakeview PM10 Attainment Plan was developed by the Oregon Department of Environmental Quality in consultation with the Town of Lakeview, Lake County, the Oregon Department of Transportation, the Oregon Department of Forestry, and EPA. It was prepared in accordance with the requirements of the Clean Air Act and EPA regulations. It is designed to achieve attainment of the NAAQS within the time frame required by the Act.

## II. Summary of Today's Action

EPA is approving the Lakeview Attainment Plan as a revision to the Oregon State Implementation Plan. This plan contains Oregon's strategy for meeting the PM10 NAAQS in Lakeview, a moderate PM10 nonattainment area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules Section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 22, 1999, without further notice unless the Agency receives adverse comments by October 21, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 22, 1999, and no further action will be taken on the proposed rule.

## III. Analysis of State Submission

Section 110(k) of the Act sets out provisions for EPA's review of SIP submittals (57 FR 13565-13566). The decision to approve Lakeview, Oregon PM10 Control Plan is based on EPA's belief that the submittal satisfies all applicable Federal requirements for moderate PM10 nonattainment area SIP

revisions.<sup>5</sup> The following discussion summarizes the basis for this finding.

### A. Procedural Background

The Act requires states to follow certain procedural requirements when developing state implementation plans and plan revisions that will be submitted to EPA. The Act also requires EPA to follow procedural requirements when reviewing and acting on these submissions.

Section 110(a)(2) and Section 110(l) of the Act require that all SIPs and SIP revisions undergo reasonable public notice and public hearing prior to adoption by the State and approval by EPA.<sup>6</sup> The Act also requires EPA to determine whether a State submission is complete before entering into further review and action (CAA section 110(k)(1); 57 FR 13565).

Activities that meet the requirements for reasonable public notice on the part of the State include: (1) A public hearing on the Lakeview Attainment Plan in Lakeview on February 16, 1995; (2) public notice for the proposed rule revision via residential mailings and media notifications.

Activities that meet the requirements for completeness determination on the part of EPA include: (1) A completeness determination conducted shortly after submittal; (2) a letter dated October 17, 1995, sent to the Director of the Oregon Department of Environmental Quality (ODEQ) indicating EPA had begun evaluating the plan in accordance with the Act.

### B. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area (CAA section 110(a)(2)(k)).

An emissions inventory provides information about the relative contribution of pollution sources within an airshed. It forms the basis for evaluating control strategies, tracking emission reductions, and measuring growth. Because this information is required for an area's attainment

<sup>5</sup> This document provides general information about EPA's approval. More detailed discussion of EPA's analysis can be found in the Technical Support Document for this action (Docket #OR55-7270).

<sup>6</sup> Section 172(c)(7) of the Act also requires that plan provisions for nonattainment areas meet applicable provisions of section 110(a)(2).

<sup>7</sup> EPA's completeness criteria for SIP submittals is specified in 40 CFR Part 51, Appendix V.

demonstration (or its demonstration that it cannot practicably attain) an accurate emissions inventory must accompany each attainment plan submission (57 FR 13539).

The Lakeview 1992 base year emissions inventory was submitted to EPA with the attainment plan on June 1, 1995. The year 1992 was chosen for

Lakeview's base year emissions inventory because it is representative of Lakeview air quality prior to the implementation of PM10 control measures. The 1992 base year was used as the baseline for setting emission reduction goals and determining an appropriate attainment strategy.

The 1992 emissions inventory identifies the relative contribution of the following major sources of PM10, before the implementation of control measures. These contributions are calculated on an annual basis as well as a 24-hour basis during the peak PM10 season (December 1–February 28).

1992 BASE YEAR—CALCULATED EMISSIONS SUMMARY <sup>8</sup>

Source	24-hour/peak season	Annual
Industry .....	21% .....	34%
Residential Woodheat .....	58% .....	42%
Solid Waste Disposal forestry/residential .....	** .....	2%
Fugitive Dust .....	11% .....	19%
Transportation .....	1% .....	2%
Other .....	9% (incl yard waste) .....	<1% (no yard waste).
Total .....	1609 lbs per day .....	141 tons per year.

\*\* Not calculated.

<sup>8</sup>The source categories used in the plan to summarize annual and 24 hour emission inventories contain inconsistencies. "Solid waste disposal" in the annual summary represents emissions from both residential and forestry burning. This category does not fully apply to the 24-hour worst-case inventory because forestry burning is a predominately summer-time activity. Winter-time emissions from residential waste disposal are represented in the "other" category in the 24-hour summary, but not in the "other category for the annual summary. This inconsistency does not affect the approvability of the SIP.

In 1999, Lakeview's attainment deadline, ODEQ projects the following contributions from the same source categories—both before and after the implementation of control measures in the attainment plan.

1999 ATTAINMENT YEAR—PROJECTED EMISSIONS SUMMARY <sup>9</sup>

Source	24-hour/no controls	24-hour/all controls
Industry .....	51% .....	40%
Residential Woodheat .....	36% .....	34%
Solid Waste Disposal forestry/residential .....	** .....	**
Fugitive Dust .....	7% .....	14%
Transportation .....	1% .....	2%
Other .....	5% (incl. yard waste) .....	10% (incl. yard waste).
Total .....	2732 lbs per day .....	1390 lbs per day.

\*\* Not calculated.

<sup>9</sup>Annual calculations are omitted because Lakeview is in attainment for the annual PM10 NAAQS and in fact has never exceeded the annual standard for PM10. EPA believes the control measures designed to bring the area into attainment for the 24-hour standard will further reduce annual emissions.

EPA finds the emission inventory to be comprehensive and accurate. EPA believes it provides a sufficient basis for the Lakeview attainment demonstration. This finding is consistent with the requirements of Sections 172(c)(3) and 110(a)(2)(K) of the Act.

C. RACM (Including RACT)

As noted, the Act requires states with moderate PM10 nonattainment areas designated after the 1990 amendments to submit attainment plans containing RACM (including RACT) within 18 months of designation. It also requires that attainment plans provide for the implementation of RACM (including RACT) no later than four years after designation (57 FR 13540).

Oregon met these deadlines by submitting the Lakeview Attainment

Plan in 1995 and implementing appropriate and timely control measures.

ODEQ determined RACM (including RACT) for Lakeview by: (1) Conducting a cost and technical analysis of the area's emission sources; and (2) evaluating available control measures for meeting the attainment needs of the community.

The results of the emissions inventory and a chemical mass balance analysis indicated that emissions from residential wood combustion were the largest source category on days that exceeded the 24-hour PM10 NAAQS. This conclusion was based on an evaluation of an average exceedance day using 1991–1993 24-hour data. On a worst-case day basis, residential wood combustion emitted 77.0% of the PM10

mass. This is equivalent to 163.1 µg/m<sup>3</sup> of the total average actual PM10 mass (211.8 µg/m<sup>3</sup>). ODEQ's analysis also indicated that actual industrial emissions were relatively minor in comparison, emitting just 3.0% <sup>10</sup> of the total PM10 mass on an average exceedance day, or 6.4 µg/m<sup>3</sup> of the total (211.8 µg/m<sup>3</sup>).

This analysis clearly showed that PM10 values that exceeded the 24-hour NAAQS were linked to emissions from residential wood combustion. As a result, ODEQ concluded that an effective attainment strategy for the 24-hour NAAQS could focus controls on

<sup>10</sup>The Lakeview Lumber Products facility ceased operation and was dismantled in 1995, after the Lakeview SIP was submitted. ODEQ estimated that this would reduce total industrial emissions in Lakeview by one half.

this source category, specifically. More stringent controls on industrial emissions appeared to offer limited benefit, serving only to reduce what was already a minor contributor to exceedance day values.

Based on dispersion modeling, a RACT analysis, and the attainment needs of the community, ODEQ determined that the level of control for the two industrial sources that were operational at the time of submittal already met the intent of RACT.<sup>11</sup> Nevertheless, the Lakeview Attainment Plan takes a protective approach and includes two additional control elements.

Revisions to ODEQ's New Source Review Rules will lower the emission threshold that triggers offset

requirements from 15 tons per year to 5. This 66% reduction will safeguard reductions gained from other control measures, ensuring they are not jeopardized by future industrial growth.

Also, one major source agreed to relinquish emission credits through a revision to the Plant Site Emission Limit in its Air Contaminate Discharge Permit, permanently reducing its allowable emissions by 70%.

EPA finds that the existing industrial controls in the Oregon SIP and those elements identified in the Lakeview Attainment Plan meet the RACT requirement for approvable RACM. This finding is supported by the fact that the full complement of control measures in the Lakeview Attainment Plan provide

for attainment of the PM10 NAAQS by December 31, 1999.

1. Lakeview Attainment Strategy

Attainment of the 24-hour PM10 NAAQS by December 31, 1999, and continued maintenance of the annual PM10 NAAQS are based on the following creditable control measures: (1) Non-certified woodstove ban; (2) voluntary woodstove curtailment program; (3) low-income woodstove removal program; (4) residential open burning restrictions; and (5) revision to a Plant Site Emission Limit (PSEL).

The following table identifies the control measures in Lakeview's attainment strategy and summarizes anticipated emission reductions and credits, where applicable.

Summary—Lakeview PM10 Attainment Strategy

Control measures—1999 Attainment Year	24-hr credit requested	1999 emission reductions
a. Non-certified Woodstove Ban .....	22% .....	215
b. Voluntary Woodstove Curtailment Program .....	30% .....	202
c. Winter Road Sanding Controls .....	none .....	* *
d. Low-income Woodstove Removal Program .....	17% .....	88
e. Public Education Programs .....	none .....	* *
f. Residential Open Burning Restrictions <sup>12</sup> .....	50% .....	8
g. Wood Products PSEL Revisions .....	60% .....	830
h. Industrial Significant Emission Rate .....	none .....	* *
i. Offset Restrictions .....	none .....	* *
j. Forestry Slash Burning .....	none .....	* *
Total reductions claimed .....		1342
Reductions needed for attainment .....		1007
Excess reductions .....		335

\* \* Not calculated.

<sup>12</sup> Page A-32 of the plan states the approximately 328 tons of residential yard debris is burned each year between October and April generating 2.6 tons of PM10. The emission reduction credit claimed for residential open burning restrictions discussed in the attainment strategy section of this notice is based on these emission estimates. See also footnote 8.

EPA accepts the credits for these control measures as proposed. This decision considers the fact that the Lakeview nonattainment area has not monitored exceedance of the 24-hour PM10 NAAQS since 1994 and has never exceeded the annual standard.

a. *Non-certified Woodstove Ban.* The State of Oregon adopted a statewide rule prohibiting the sale of any used woodstove not certified under Oregon's 1986 woodstove emission standard (OAR 340-34-010). In addition, the Oregon State Building Code Agency amended its administrative rules to prohibit the installation of non-certified used woodstoves in new homes.

To enforce these provisions, ODEQ will investigate potential violations of the non-certified woodstove ban and take appropriate enforcement actions if

necessary. ODEQ has also committed to public education and outreach activities to increase public awareness and compliance with the non-certified woodstove ban. The State Building Code Agency will enforce the regulations prohibiting the installation of non-certified woodstoves.

Prior to these regulations, approximately 21% of woodstoves purchased were non-certified. As a result of this ban, each new woodstove purchased in lieu of a non-certified woodstove will result in an estimated 50% per unit reduction in PM10 emissions. ODEQ estimates that this control will reduce Lakeview's PM10 emissions by 215 lbs per day in the attainment year. EPA accepts the 22% credit claimed for this control measure.

b. *Voluntary Woodburning*

*Curtailment Program.* The Lakeview Voluntary Woodburning Curtailment Program is designed to limit the use of woodstoves and fireplaces when PM10 levels are most likely to exceed the 24-hour NAAQS. This voluntary curtailment program has been in operation and administered by the town of Lakeview since the fall of 1993.

The Lakeview Town Council formally adopted local ordinances implementing the Lakeview Air Quality and Voluntary Woodburning Curtailment Programs in February 1995. Also, the Lake County Board of Commissioners adopted complementary ordinances in March 1995.

The plan specifies that the Lakeview's Voluntary Woodburning Curtailment Program is operational between

<sup>11</sup> This finding is consistent with EPA's policy that RACM (including RACT) does not require implementation of all available control measures

when: (1) an area can already achieve timely attainment; and (2) additional controls will not

appreciably expedite attainment. See 57 FR 13540-13544.

November 1 and February 28, when PM10 levels are typically elevated. During this period, curtailment forecasts are made daily at 3:30 p.m. Air quality forecasts are based on the Klamath Falls curtailment advisory, a nearby community with similar airshed characteristics. If the correlation between these communities does not continue, the plan states ODEQ will develop a site specific forecasting equation for Lakeview.

The Lakeview Voluntary Woodburning Curtailment Program involves a three-tier advisory system with different burning restrictions based on the risk of exceedance. The advisory levels are: (1) GREEN—no restrictions, NAAQS violations unlikely, PM10 levels less than 80  $\mu\text{m}^3$  expected; (2) YELLOW—restrict unnecessary wood burning, NAAQS violations possible, PM10 levels between 81–150  $\mu\text{m}^3$  expected; (3) RED—restrict all wood burning (except homes with woodheat only), NAAQS violations likely, PM10 levels greater than 150  $\mu\text{m}^3$  expected.

The Lakeview Voluntary Woodburning Curtailment Program includes a woodstove survey and compliance protocol for conducting and evaluating woodheating visual surveys. These survey procedures and data collection tools assist Town officials with collecting information on compliance rates and resulting emission reductions.

The goal of the Lakeview curtailment program is to achieve a 30% compliance rate on the two to four days per year when NAAQS exceedances are most likely. The program is administered by the Town of Lakeview and endorsed by local ordinances. The Town of Lakeview conducts ongoing assessments of curtailment compliance rates and focuses efforts as needed on achieving its compliance goal.

ODEQ anticipates success in Lakeview similar to that achieved in other communities in Oregon with voluntary curtailment programs, including Medford, Klamath Falls, and La Grande.

EPA accepts the 30% credit claimed for this control measure based on a 202 lbs per day emission reduction. This finding considers the merit of the elements above, consistency with EPA guidance, and the success of similar programs in Oregon.

*c. Winter Road Sanding Controls.* The base year emissions inventory estimates that fugitive dust associated with roadways accounts for approximately 11% of the worst-case day emissions. In winter, the majority of these emissions are attributed to road de-icing and application of anti-skid materials. Due

to the seasonal nature of this emission source, ODEQ chose not to pursue year-round RACM measures such as paving or transportation reduction plans. Instead, the control measures focus on reducing emissions from winter road sanding.

RACM for fugitive dust in Lakeview involves the following elements to be carried out by the Oregon Department of Transportation: (1) The use of cleaner, more durable aggregates; (2) the coordination with local officials of rapid aggregate cleanup after snow episodes; and (3) the continued study of liquid chemical deicers as an alternative to conventional sanding material.

While no credit is claimed, it is expected that this measure will reduce emissions when they are needed most, during winter-time inversions when air quality is most likely to become compromised.

*d. Low-income Woodstove Removal Program.* The woodstove removal program is an incentive based program that encourages the replacement of non-certified woodstoves with cleaner burning alternatives, such as certified stoves, kerosene heaters, and pellet stoves. The program targets low to moderate income households that use woodstoves as the primary source of heat.

In August 1994, the Town of Lakeview received a \$200,000 State of Oregon Community Block Grant for the program. Matching funds included: (1) \$5,000 and in-kind services from the Town of Lakeview; and (2) \$2,000 from Lake County. The total sum, \$207,000, enabled Lakeview to offer interest free, deferred payment loans for the replacement of inefficient woodstoves.

The credit claimed for this control measure is based on the assumption that non-wood heating systems would be the primary replacements for non-certified woodstoves. This assumption is consistent with County permit records that show an overwhelming preference (90%) for kerosene heating systems in woodstove change-outs.

EPA accepts the 17% credit claimed for this control measure based on an 88 lbs per day emission reduction.

*e. Lakeview Public Education Program.* ODEQ considers the Lakeview Public Education Program to be a cornerstone of the attainment plan's suite of residential wood combustion controls. This program is designed to educate the community about the hazards of particulate air pollution and encourage compliance with emission reduction programs.

Key elements of the public education program include: (1) radio public service announcements; (2) posters and

brochures; (3) bulk mailings and mail inserts; (4) community meetings; (5) personal contact to promote proper woodheating practices; (6) press releases on clean air issues, Air Pollution Index Trends, and woodburning curtailment calls; (7) newspaper advertisements and radio announcements; (8) distribution of woodsmoke health effects information; (9) public speaking engagements and symposiums; (10) coordination with advisory committees; and (11) a burning advisory telephone system.

While no emission reduction credit is requested, these programs are integral to the success of other control measures. EPA believes this measure is central to the voluntary woodburning curtailment program, partially justifying that credit. EPA believes the Lakeview Public Education Program is an important part of the Lakeview attainment strategy.

*f. Residential Open Burning Restrictions.* The Lakeview Open Burning Ordinance contains restrictions on residential open burning within the urban growth boundary. No open burning is allowed except by special permit.

Permit conditions require that burning be allowed on GREEN curtailment advisory days only. Violation of permit conditions is punishable by civil penalty.

EPA accepts the 50% credit claimed for this control measure based on an 8 lbs per day emission reduction.

*g. Wood Products Plant Site Emission Limit Revisions.* According to the 1992 base year emission inventory, the Ostrander Construction Company's Fremont Sawmill accounts for 25% of the point source emissions. The facility's Plant Site Emission Limit (PSEL) as defined in its 1992 air contaminant discharge permit contained a credit of 34.2 lbs per hour (15 tons per year) as a result of the previous shutdown of the Wigwam burner. The company agreed to relinquish this credit to the Lakeview airshed.

The subsequent air contaminant discharge permit, effective September 29, 1994, reflected this reduction and changed the allowable emissions from a total of 1,190 lbs per day to 360 lbs per day.

EPA accepts the 60% credit claimed for this control measure, based on an 830 lbs per day emission reduction.

*h. Industrial Significant Emission Rate.* Oregon Administrative Rule 340-28-110 Significant Emission Rate provision for industrial sources was amended to add the Lakeview Nonattainment area. This provision will manage industrial emission growth by lowering the threshold for significant emission rate increases that trigger

emission offset requirements for new and modified sources.

As a result of this provision, the significant emission rate that triggers New Source Review for new and modified sources in Lakeview was reduced from 15 to 5 tons per year.

No formal emission reduction credit is claimed; however, this control measure is protective and will likely prevent increases industrial emissions that are not accounted for in the attainment plan.

*i. Offset Restrictions.* The offset requirements in OAR 340-28-1930 require any emission increase greater than 5 tons per year be fully offset. Emission increases greater than 15 tons per year require Lowest Achievable Emission Rate (LAER) controls.

No formal credit is claimed for this control measure. These provisions for future industrial growth are expected to protect the emission reductions achieved with the credited control measures.

*j. Forestry Slash Burning.* To reduce potential smoke impacts from forest slash burning, the Oregon Smoke Management Plan (ORS 477.515) will be amended to create a special protection zone for the Lakeview PM10 nonattainment area. This special protection zone will provide for the following voluntary restrictions on prescribed burning within 20 miles of the nonattainment area: (1) prohibition on burning if weather forecasts predict smoke impacts on the nonattainment area; (2) monitoring of burns for at least three days for potential smoke impacts on the nonattainment area; and (3) ban on fires from December 1 to February 15 when RED woodburning curtailment days are in effect.

#### D. Attainment Demonstration

##### 1. Requirements

As noted, moderate PM10 nonattainment areas designated after the enactment of the 1990 Clean Air Act Amendments are required to submit an attainment demonstration which includes air quality modeling (CAA section 189(a)(1)(B)). This demonstration must show either the attainment of the NAAQS as expeditiously as practicable within six years of designation or that such a date is not practicable (CAA section 188(c)(1)). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539).

The 24-hour PM10 NAAQS is 150  $\mu\text{g}/\text{m}^3$ . This standard is attained when the expected number of days per calendar year with a 24-hour average

concentration above 150  $\mu\text{g}/\text{m}^3$  is equal to or less than one. (40 CFR 50.600)

The annual PM10 NAAQS is 50  $\mu\text{g}/\text{m}^3$ . This standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .

While the Act requires SIP revisions for PM10 nonattainment areas to include an attainment demonstration for both the 24-hour and annual NAAQS, Lakeview has never exceeded the annual PM10 NAAQS. The monitored 24-hour exceedances which resulted in Lakeview's nonattainment designation are well delineated as winter-time events caused primarily by residential woodsmoke.

ODEQ requested in a August 15, 1994, letter to EPA that the Lakeview Attainment Plan be allowed to omit a demonstration based on the annual PM10 NAAQS. Based on review of the emission inventory and demonstrated lack of annual exceedances, EPA concurred with this request.

This decision is supported by the following facts: (1) The area has never exceeded annual standard; (2) all 24-hour exceedances are limited to the wood heating season; and (3) industrial sources do not significantly impact exceedance values. These facts are documented in the Lakeview Attainment Plan.

As a result of this earlier determination, the Lakeview Attainment Plan provides an attainment demonstration based on the 24-hour PM10 NAAQS only. All the following discussion with regard to Lakeview's attainment demonstration is based on the 24-hour NAAQS.

##### 2. Methodology

EPA recommends that attainment demonstrations be conducted according to the PM10 SIP Development Guideline (June 1987). Federal regulations require demonstration of attainment "by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes" (40 CFR 51.112). The preferred method is a combination of both dispersion and receptor modeling.

The regulation and guideline also allows the use of dispersion modeling alone, or the use of two receptor models in combination with proportional roll-back. In cases where dispersion models can-not or need-not be broadly applied, receptor modeling such as Chemical Mass Balance (CMB) is recommended.

ODEQ chose the CMB receptor modeling approach for Lakeview due to the prevalence of stagnate, inverted airshed conditions. Also, when worst-case days occur, the airshed is heavily

dominated by emissions from area sources such as woodstoves, fireplaces, and fugitive dust. Because, EPA has not developed an approved dispersion model for conditions of this type, Lakeview's attainment demonstration was not based on dispersion modeling.<sup>13</sup>

ODEQ conducted an attainment demonstration using receptor modeling proportional roll-back calculations to estimate the emission reductions required in 1999 to achieve the 24-hour NAAQS. While this method was relied upon as the primary authority for worst-case day source apportionment, two additional methods were used to validate various aspects of the CMB solutions. Emission inventory estimates and a dispersion modeling analysis of hog fuel boiler impacts at a reference monitor site were also used to verify the CMB results.

##### 3. Results

The CMB, emission inventory, and dispersion modeling methods used to characterize the Lakeview airshed generated results that were in general agreement. This implies that the results form a credible basis for the attainment demonstration.

The emission inventory and receptor modeling methods of characterizing emissions in an airshed generated similar profiles for Lakeview. The two methods implicated the same significant source categories; and both methods generated analogous profiles for source apportionment.

Source apportionment for a future-year 24-hour worst-case day (attainment year 1999), suggested woodstoves were the primary source of PM10. According to the emission inventory, woodstove emissions would make up 46% of total PM10 mass on a 24-hour worst-case day in 1999. Similarly, the CMB analysis shows that woodstove emissions would comprise 69% of total PM10 mass.

Using a hypothetical PM10 mass value of 200  $\mu\text{g}/\text{m}^3$  for a 1999 worst-case day for illustration, the emissions inventory results suggest that 92  $\mu\text{g}/\text{m}^3$  of this total would be from residential woodsmoke. The CMB analysis results suggest that 138  $\mu\text{g}/\text{m}^3$  of the total would be from residential woodsmoke. The proportion of total mass attributable to woodsmoke are in general agreement. Both suggest that significant reductions in this source could bring total 24-hour

<sup>13</sup>EPA's 1990 memo from Robert Bauman regarding "simple airsheds" allows the use of proportional roll-back modeling in lieu of dispersion modeling when local impacts are attributable to only a few, well characterized source categories.

PM10 mass values below the NAAQS, 150  $\mu\text{g}/\text{m}^3$ .

Results from the dispersion modeling of industrial source emissions from a hog fuel boiler were also in agreement with the CMB analysis. The CMB analysis indicates a mean contribution of 6.3  $\mu\text{g}/\text{m}^3$ . The dispersion model indicates levels above and below this estimate depending on the data set used (0.3  $\mu\text{g}/\text{m}^3$  – 7.4  $\mu\text{g}/\text{m}^3$ ); however, the results overall support the CMB analysis, indicating a relatively low impact from this industrial point source.

EPA guidance on CMB modeling specifies that the apportionment should account for at least 80% of the measured aerosol mass. ODEQ's analysis met this requirement and accounted for an average 92% mass.

ODEQ determined the 1992 24-hour worst-case day design value without controls to be 217  $\mu\text{g}/\text{m}^3$  using EPA's table look up procedure. Other estimates generated with EPA approved methods were close to, but less than 217  $\mu\text{g}/\text{m}^3$ . This base year design value was used because it was more conservative and more protective.

This value was adjusted for emission growth expected to occur between the base year (1992) and the attainment year (1999). This resulted in a 1999 worst-case day design value of 232.8  $\mu\text{g}/\text{m}^3$ . This design value was used to estimate emission reductions needed to attain the PM10 NAAQS in 1999.

Based on the 232.8  $\mu\text{g}/\text{m}^3$  design value, ODEQ estimated that 1999 worst-case day emissions must be reduced by 37%, or 83  $\mu\text{g}/\text{m}^3$ . This is equivalent to 1007 lbs PM10 emissions per day. Thus, to attain the standard, the total emission reductions achieved by the control measures in the attainment strategy must be greater than or equal to 83  $\mu\text{g}/\text{m}^3$ , or 1007 lbs per 1999 worst-case day.

The previously discussed control measures will reduce emissions by 1342 lbs per worst-case day, creating a 335 lbs per day safety margin. According to proportional roll-back modeling, this reduction will result in a worst-case day ambient concentration of 122.5  $\mu\text{g}/\text{m}^3$ . This concentration is below 150  $\mu\text{g}/\text{m}^3$  and demonstrates attainment of the applicable 24-hour PM10 NAAQS.

EPA approves the attainment demonstration. This decision considers the fact that the area has not monitored any PM10 exceedances since 1994. Air quality monitoring data indicates that Lakeview has attained the 24-hour PM10 NAAQS and continues to maintain the annual PM10 NAAQS.

It is EPA's opinion that the appropriate air quality model was used and all significant emission sources and impacts were considered. The

attainment plan demonstrates attainment of the 24-hour PM10 NAAQS by 1999 and maintenance through 2009. EPA also finds that the plan demonstrates continued maintenance of the annual PM10 NAAQS through 2009.

#### *E. PM10 Precursors*

The control requirements that apply to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors, unless EPA determines such sources do not contribute significantly to PM10 levels in excess of the NAAQS (CAA § 189(e)). The General Preamble contains guidance addressing how EPA intends to implement Section 189(e) (57 FR 13539–13542).

ODEQ's technical analysis indicates that emissions from industrial point sources have considerably less impact on the 24-hour standard than residential wood combustion in the Lakeview nonattainment area. Residential wood combustion is further implicated because violations of the 24-hour standard have consistently occurred during the wood burning season during extended periods of cold temperature and airshed stagnation.

The CMB analysis also indicates that secondary particulates are not a major component of the area's PM10 emissions. This analysis identifies that, on an adjusted average winter exceedance day, only 4.4% of the average actual PM10 mass is secondary particulate. This equals approximately 9.32  $\mu\text{g}/\text{m}^3$  of the total average actual (211.8  $\mu\text{g}/\text{m}^3$ ) per day.

EPA believes that sources of PM10 precursors do not contribute significantly to PM10 levels in excess of the NAAQS in the Lakeview nonattainment area. EPA grants Lakeview exclusion from the control requirements authorized under Section 189(e) of the Act for major stationary sources of PM10 precursors.

This general finding is based on the current character of the area. It is possible that future growth will change the significance of precursors in the area and warrant reconsideration of this finding.

#### *F. Quantitative Milestones and Reasonable Further Progress*

PM10 nonattainment area plan SIP revisions demonstrating attainment must contain quantitative milestones to be achieved every three years until the area is redesignated to attainment. Achieving these incremental reductions in PM10 emissions demonstrates reasonable further progress, as defined in Section 171(1) of the Act (see also CAA section 189(c)).

In its interpretation of Section 189(c), the General Preamble states that the first three-year period begins on the due date for the applicable implementation plan revision containing control measures for the area (57 FR 13539). EPA believes that at least two milestones should be addressed initially. Once a milestone has passed, the state must demonstrate that the milestone was achieved (CAA section 189(c)(2)).

The Lakeview submittal, received by EPA on June 1, 1995, must demonstrate reasonable further progress for the time periods April 1995–1998 and April 1998–2001 unless the area attains sooner.

The Lakeview Attainment Plan demonstrates attainment of the PM10 NAAQS by December 31, 1999, and maintenance of the NAAQS through 2009. The plan satisfies at least two milestones.

EPA approves the submittal as meeting the quantitative milestone requirement currently due (April 25, 1998). This is supported by the lack of monitored exceedances since 1994.

#### *G. Enforceability*

All emission limits and control in a SIP must be enforceable by ODEQ and EPA (see CAA section 172(c)(6), CAA section 110(a)(2)(A), and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, and Francis S. Blake, General Counsel, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency". Nonattainment area provisions must also contain a program that provides for the enforcement of the control measures and the regulation of modifications and construction of any stationary source within the area as necessary to assure the NAAQS are achieved (CAA section 110(a)(2)(c)).

EPA has reviewed the Lakeview Attainment Plan and finds it enforceable with regard to the considerations discussed above. EPA believes the plan, including those control measures relied upon for attainment, satisfies applicable requirements and is fully enforceable by the state.

The specific control measures contained in the Lakeview Attainment Plan are discussed in this Federal Register notice under III. Analysis of State Submission, C. RACM (including RACT). These control measures apply throughout the nonattainment area and to all applicable activities, including

residential woodstove use and other woodburning activities.

The following summarizes the state, city, county, and interagency commitments that EPA approves as part of the Oregon SIP. These include required control measures (noted with abstricks) and SIP strengthening measures.

*a. State of Oregon Rules.* (1) OAR Division 34\*. This division establishes rules to control, reduce, and prevent air pollution caused by residential woodheating emissions. *Ban on Used Woodstove Sales*—OAR 340-34-101 through 340-34-020. These rules establish requirements for the sale of new and used woodstoves, specifically prohibiting the sale and resale of non-certified woodstoves. *Woodstove Certification Program*—OAR 340-34-045 through 340-34-115. These rules require all new stoves, unless specifically exempted, to be certified by the Administrator and be in compliance with particulate emission limits specified in federal regulations.

(2) OAR 340-28-110. Revisions to the Significant Emission Rate Rule apply "Table 3" Significant Emission Rate Levels to the Lakeview PM10 nonattainment area.

(3) OAR 340-28-1930. The Lakeview Industrial Emission Offset Rule requires that new major sources or major modifications that increase PM10 emissions more than 5 tons per year be fully offset. LAER technology may be applied in lieu of offsets.

(4) OAR 340-30-200 through 340-30-255. These rules establish industrial dust RACM and special requirements for operation and maintenance plans for sources in the Lakeview urban growth area.

*b. City Resolutions and Ordinances.*

(1) Resolution No. 402. This Town of Lakeview resolution establishes and defines a Lakeview Air Quality Improvement Program to cooperatively restore and maintain healthful air quality within the Town of Lakeview.

(2) Ordinance No. 748\*. This Town of Lakeview ordinance prohibits the use of solid fuel burning devices during an Air Pollution Alert Period (unless specifically exempted) and prohibits the rent or lease of property not equipped with an Alternative Heat Source (on or after two years from effective date).

(3) Ordinance No. 749\*. This Town of Lakeview ordinance prohibits the burning of solid waste and places additional restrictions on open burning.

*c. County Resolutions and Ordinances.*

(1) Resolution March 15, 1995. This Lake County resolution establishes the Lake County Commission's commitment to

cooperatively implement the Lakeview Air Quality Improvement Program within the Lakeview urban growth boundary.

(2) Ordinance No. 29\*. This Lake County ordinance prohibits the use of solid fuel burning devices during an Air Pollution Alert Period (unless specifically exempted) and prohibits the rent or lease of property not equipped with an Alternative Heat Source (on or after two years from effective date).

(3) Ordinance No. 30\*. This Lake County ordinance prohibits the burning of solid waste and places additional restrictions on open burning.

*d. Interagency Commitments.* (1) Winter Road Sanding Program. An Oregon Department of Transportation, Highway Division Memorandum of Understanding, establishes the Agency's commitment to: (a) identify and utilize cleaner sanding materials; and (b) clean-up spent sanding material promptly.

(2) Forestry Smoke Management Plan. Oregon Department of Forestry amendments to this plan (ORS 477.515) create a special protection zone for the Lakeview nonattainment area.

#### H. Contingency Measures

As provided in Section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures (57 FR 13543-13544).

Contingency measures consist of other available measures that are not part of the area's initial control strategy. These measures must take effect without further action by the State or EPA upon determination by EPA that the area has either: (1) Failed to attain the PM10 NAAQS by the applicable deadline; or (2) failed to make reasonable further progress.

EPA guidance recommends that the emission reductions expected from the implementation of the contingency measures equal 25% of the total reduction in actual emissions expected from the plan's control strategy (57 FR 13544). EPA believes that contingency measures must, at a minimum, provide for continued progress toward attainment during the time between an area's failure to attain and the state's adoption of additional measures required by reclassification to serious, where applicable (57 FR 13511).

The Lakeview Attainment Plan contains three contingency measures. ODEQ estimates that these controls will reduce PM10 emissions an additional 249 lbs per day by the year 1999 if implemented. This represents 25% of expected 1999 emissions after the application of other control measures. This meets the requirements for

contingency measure reductions applicable to moderate nonattainment areas. The specific contingency measures are:

#### 1. Mandatory Woodstove Curtailment Program

This measure upgrades the Lakeview voluntary curtailment program to a mandatory program, including enforcement provisions, procedures, penalties, and exemptions. This provision is contained in the Town of Lakeview Air Quality Resolution No. 402. State backup authority exists in OAR 340-34-150 through OAR 340-34-175. This requires the State to implement a mandatory program should the local government fail to do so.

#### 2. Removal of Non-certified Woodstoves

This is State backup authority for requiring the removal of non-certified woodstoves upon the sale of a home, as contained in OAR 340-34-200 through 340-34-215. This provision will be implemented automatically, if necessary to demonstrate RFP or attainment of the NAAQS.

#### 3. Prescribed Burning

As a contingency, a mandatory forest slash burning program would be implemented if slash burning smoke is found to be a significant contributor to PM10 nonattainment.

EPA approves the contingency measures for the Lakeview nonattainment area.

### IV. Implications of This Action

EPA approves the Lakeview, Oregon, PM10 Control Plan as a revision to the Oregon State Implementation Plan. This attainment plan was submitted to EPA on June 1, 1995.

EPA finds that the SIP revision meets the requirements for a moderate nonattainment area and demonstrates attainment of the PM10 NAAQS by the applicable deadline. The fact that Lakeview has not experienced an exceedance of the 24-hour PM10 NAAQS since 1994 and has never exceeded the annual PM10 NAAQS further supports this finding. EPA's action includes approval of the plan's contingency measures.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### A. Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in Section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a Section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

### B. Oregon Audit Privilege

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, Sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under Section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

### C. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

### D. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

### E. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be Economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks

### F. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified Section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments To provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

### G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under Section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act,

preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### H. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### J. Petitions for Judicial Review

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 November 22, 1999. 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 in 40 CFR Part 52

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

**Note:** Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 23, 1999.

**Chuck Findley,**

*Acting Regional Administrator,*  
*Region 10.*

Part 52, 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) (128) to read as follows:

##### § 52.1970 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(128) On June 1, 1995 the State of Oregon submitted to EPA an attainment plan for the Lakeview PM10 nonattainment area. This SIP revision is designed to bring about the attainment of the PM10 NAAQS in Lakeview and satisfy Federal requirements applicable to moderate PM10 nonattainment areas.

(i) Incorporation by reference.

(A) June 1, 1995 letter from the Director, Oregon Department of Environmental Quality, the Governor's designee, to Region 10 Regional Administrator, EPA, submitting the Lakeview, Oregon PM10 Control Plan.

(B) Revision to the Oregon State Implementation Plan: Lakeview, Oregon PM10 Control Plan; Appendix 3, Lakeview Detailed Emissions Inventories; Appendix 4, Ordinances and Commitments; Appendix 5,

Demonstration of Attainment; Appendix 9, Woodburning Curtailment Survey Protocol; Appendix 10, Legal Description of Lakeview PM10 Nonattainment Area.

(C) Supporting regulations approved as part of the revision, state effective May 1, 1995: OAR 340-20-047; OAR 340-21-010, -012, -025, -200; OAR 340-30-043, -300, -310, -340; OAR 340-34-150, -200, -210.

[FR Doc. 99-24447 Filed 9-20-99; 8:45 am]  
BILLING CODE 6560-50-U

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-300903; FRL-6097-8]

RIN 2070-AB78

#### Sulfentrazone; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl] phenyl] methanesulfonamide in or on sunflowers, lima beans, and cowpeas. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sunflowers, lima beans, and cowpeas. This regulation establishes a maximum permissible level for residues of sulfentrazone in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerances will expire and is revoked on December 30, 2000.

**DATES:** This regulation is effective September 21, 1999. Objections and requests for hearings must be received by EPA on or before November 22, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300903], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations