



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R10-OAR-2013-0004; FRL -9954-32-Region 10]**

**Partial Approval and Partial Disapproval of Attainment Plan for Oakridge, Oregon PM<sub>2.5</sub> Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** On December 12, 2012, the Oregon Department of Environmental Quality (ODEQ) submitted, on behalf of the Governor of Oregon, a State Implementation Plan (SIP) submission to address violations of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>) for the Oakridge PM<sub>2.5</sub> nonattainment area (2012 SIP submission). The Lane Regional Air Protection Agency (LRAPA), in coordination with the ODEQ, developed the 2012 SIP submission for purposes of attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS. On February 22, 2016, the ODEQ withdrew certain provisions of the 2012 SIP submission (2016 SIP withdrawal). The Environmental Protection Agency (EPA) has evaluated whether the remaining portions of the 2012 SIP submission meet the applicable Clean Air Act (CAA) requirements. Based on this evaluation, the EPA is finalizing partial approval and partial disapproval of the remaining portions of the 2012 SIP submission.

**DATES:** This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2013-0004. All documents in the docket are listed on the <http://www.regulations.gov>

website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information the disclosure of which 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 Air Planning Unit, Office of Air and Waste, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. The EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christi Duboiski at (360) 753-9081, [duboiski.christi@epa.gov](mailto:duboiski.christi@epa.gov) or by using the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:**

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**I. Background Information**

On July 28, 2016, the EPA proposed to partially approve and partially disapprove the attainment plan submitted by the ODEQ on December 12, 2012 (81 FR 49592). An explanation of the CAA attainment planning requirements, a detailed analysis of the submittal, and the EPA's reasons for proposing partial approval and partial disapproval were provided in the notice of

proposed rulemaking, and will not be restated here. The public comment period for the proposed rule ended on August 29, 2016. The EPA received no comments on the proposal.

## **II. Final Action**

The EPA is finalizing approval of the following elements of the 2012 SIP submission:

- Description of the Oakridge PM<sub>2.5</sub> nonattainment area and listing of the area as nonattainment, and
- The base year 2008 emission inventory submitted to meet the CAA section 172(c)(3) requirement for emissions inventories.

The EPA is finalizing disapproval of the following elements of the 2012 SIP submission:

- the attainment year emission inventory submitted to meet the CAA section 172(c)(3) requirement for emissions inventories,
- the reasonably available control measures (RACM), including reasonably available control technology (RACT), submitted to meet the CAA sections 172(c)(1) and 189(a)(1)(C) requirements for control measures for moderate nonattainment areas,
- the attainment demonstration submitted to meet the CAA section 189(a)(1)(B) requirement for a demonstration that the plan will provide for attainment by the applicable attainment date,
- the motor vehicle emissions budget (MVEB) submitted to meet CAA section 176 requirement for transportation conformity,
- the demonstration of reasonable further progress (RFP) and quantitative milestones submitted to meet section 172(c)(2) and 189(c) requirements for RFP and quantitative milestones, and

- the contingency measures submitted to meet the section 172(c)(9) requirement for the implementation of measures to be undertaken, without further action by the state or EPA, if the area fails to make RFP or attain the NAAQS by the applicable attainment date.

### **III. Consequences of a Disapproved SIP**

This section explains the consequences of a disapproved SIP submission required under the CAA. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit, and the EPA approve, a plan revision that corrects the deficiencies identified by the EPA in its disapproval.

#### *The Act's Provisions for Sanctions*

Once the EPA finalizes disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, CAA section 179(a) provides for the imposition of sanctions, unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP submission, or portion thereof. Under the EPA's sanctions regulations at 40 CFR 52.31, the first sanction imposed would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the state has still failed to submit a SIP submission to correct the identified deficiencies for which the EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a prohibition on the approval or funding certain highway projects.<sup>1</sup>

#### *Federal Implementation Plan Provisions That Apply if a State Fails To Submit an Approvable*

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<sup>1</sup> On April 1, 1996 the US Department of Transportation published a notice in the Federal Register describing the criteria to be used to determine which highway projects can be funded or approved during the time that the highway sanction is imposed in an area. (See 61 FR 14363)

## *Plan*

In addition to sanctions, once the EPA finds that a state failed to submit the required SIP revision, or finalizes disapproval of the required SIP revision or a portion thereof, the EPA must promulgate a FIP no later than two years from the date of the finding – if the deficiency has not been corrected within that time period.

## *Ramifications Regarding Conformity*

One consequence of the EPA's action finalizing disapproval of a control strategy SIP submission is a conformity freeze.<sup>2</sup> If the EPA finalizes disapproval of the attainment demonstration SIP without a protective finding, a conformity freeze will be in place as of the effective date of the disapproval (40 CFR 93.120(a)(2)).<sup>3</sup> The Oakridge PM<sub>2.5</sub> nonattainment area is an isolated rural area as defined in the transportation conformity rule (40 CFR 93.101). As such, it does not have a metropolitan planning organization (MPO), and there is no long range transportation plan or TIP that would be subject to a freeze. However, the freeze does mean that no projects in the Oakridge PM<sub>2.5</sub> nonattainment area may be found to conform until another attainment demonstration SIP is submitted, and the motor vehicle emissions budgets are found adequate, or the attainment demonstration is approved.

## **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference.

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<sup>2</sup> Control strategy SIP revisions as defined in the transportation conformity rules include reasonable further progress plans and attainment demonstrations (40 CFR 93.101).

<sup>3</sup> The EPA would give a protective finding if the submitted control strategy SIP contains adopted control measures, or written commitments to adopt enforceable control measures, that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment (40 CFR 93.101 and 93.120(a)(2) and (3)). The submitted attainment plan for the Oakridge NAA does not contain all necessary controls to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS and therefore is not eligible for a protective finding.

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## **V. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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. The EPA will submit a report containing this action 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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) of the CAA).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 6, 2016.

Dennis J. McLerran,  
Regional Administrator,  
Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

#### **Subpart MM—Oregon**

2. In 52.1970 (c), amend Table 4 – EPA Approved Lane Regional Air Protection Agency (LRAPA) Rules for Oregon by:

- A. Revising the heading for Title 29; and
- B. Revising entries 29-0010 and 29-0030.

The revisions read as follows:

#### **§ 52.1970 Identification of plan.**

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(c) \* \* \*

Table 4—EPA Approved Lane Regional Air Protection Agency (LRAPA) Rules for Oregon

| LRAPA citation                                   | Title / subject                    | State effective date | EPA approval date  | Explanations                |
|--|------------------------------------|----------------------|--|-----------------------------|
| * * * * *  |                                    |                      |  |                             |
| <b>Title 29—Designation of Air Quality Areas</b> |                                    |                      |  |                             |
| 29-0010  | Definitions                        | 10/18/2012           | [Insert date of publication in the <u>Federal Register</u> ],<br>[Insert <u>Federal Register</u> citation] | Except 1-5, 7-9, and 11-15. |
| 29-0030  | Designation of Nonattainment Areas | 10/18/2012           | [Insert date of publication in the <u>Federal Register</u> ],<br>[Insert <u>Federal Register</u> citation] |                             |
| * * * * *  |                                    |                      |  |                             |

[FR Doc. 2016-25296 Filed: 10/20/2016 8:45 am; Publication Date: 10/21/2016]