

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. 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 May 22, 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: February 24, 2006.

**Julie M. Hagensen,**

*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)(146) to read as follows:

**§ 52.1970 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(146) On October 25, 2005, the Oregon Department of Environmental Quality submitted a PM<sub>10</sub> maintenance plan and requested redesignation of the La

Grande PM<sub>10</sub> nonattainment area to attainment for PM<sub>10</sub>. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rule 340-204-0030 and 0040, as effective September 9, 2005.

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

**§ 52.1973 Approval of plans.**

\* \* \* \* \*

(e) \* \* \*

(3) EPA approves as a revision to the Oregon State Implementation Plan, the La Grande PM<sub>10</sub> 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 "La Grande (the Urban Growth Boundary Area)" to read as follows:

**§ 81.338 Oregon.**

\* \* \* \* \*

**OREGON—PM-10**

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
La Grande (the Urban Growth Boundary area) .....	5/22/06	Attainment.	*	*
* * * * *				

\* \* \* \* \*  
 [FR Doc. 06-2698 Filed 3-21-06; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R10-OAR-2006-0010; FRL-8041-9]

**Approval and Promulgation of Air Quality Implementation Plans; Lakeview PM<sub>10</sub> Maintenance Plan and Redesignation Request**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a PM<sub>10</sub> State

Implementation Plan (SIP) maintenance plan revision for the Lakeview, Oregon nonattainment area and to redesignate the area from nonattainment to attainment for PM<sub>10</sub>. PM<sub>10</sub> air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. 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 PM<sub>10</sub> National Ambient Air Quality Standards and all other requirements of the Clean Air Act for redesignation to attainment are met.

**DATES:** This direct final rule will be effective May 22, 2006, without further notice, unless EPA receives adverse comments by April 21, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2006-0010, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Donna Deneen, Office of Air, Waste and Toxics, AWT-107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2006-0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, such as 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 in <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen at telephone number: (206) 553-6706, e-mail address: [deneen.donna@epa.gov](mailto:deneen.donna@epa.gov), fax number: (206) 553-0110, or the above EPA, Region 10 address.

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

## Table of Contents

- I. General Overview
  - A. What Action Are We Taking?
  - B. What Is the Background for This Action?
    - 1. Description of the Area
    - 2. Nonattainment History of the Lakeview Area
    - 3. Description of the Air Quality Problem
- II. Review of Maintenance Plan
  - A. What Criteria Did EPA Use To Review the Maintenance Plan?
    - 1. Attainment Emissions Inventory (and Future Year Inventory)
    - 2. Maintenance Demonstration
    - 3. Monitoring Network
    - 4. Verification of Continued Attainment
    - 5. Contingency Plan
  - B. What Do We Conclude About the Maintenance Plan?
- III. Review of Redesignation Request
  - A. What Criteria Did EPA Use To Review the Request for Redesignation?
    - 1. Attainment of the NAAQS
    - 2. SIP Nonattainment Area Plan Approval Under Section 110(k)
    - 3. Permanent and Enforceable Improvements in Air Quality
    - 4. Section 110 and Part D Requirements
      - a. Section 110 Requirements
      - b. Part D Requirements
        - i. Section 172(c) Plan Provisions
        - ii. Subpart 4 Requirements
    - 5. Transportation Conformity
    - 6. Maintenance Plans

- B. What Do We Conclude About the Request for Redesignation?
- IV. Statutory and Executive Order Reviews

## I. General Overview

### A. What Action Are We Taking?

We are taking direct final action to approve the SIP revision and redesignation request submitted by the State of Oregon Department of Environmental Quality (DEQ or State) on October 25, 2005, for the Lakeview, Oregon PM<sub>10</sub> nonattainment area (Lakeview nonattainment area). We are approving the State's SIP revision and request for redesignation because the State adequately demonstrates that the control measures being implemented in the Lakeview area result in maintenance of the PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS) and all other requirements of the Clean Air Act (the Act) for redesignation to attainment are met. See the Technical Support Document (TSD) accompanying this notice for further supporting documentation.

### B. What Is the Background for This Action?

#### 1. Description of the Area

Lakeview is located in southern Oregon about 96 miles east of Klamath Falls at an elevation of about 4800 feet. The area is typified by semi-arid climate where annual rainfall is 13 inches. The Lakeview Urban Growth Boundary (UGB), which defines the nonattainment area boundaries, had an estimated population of 3,656 in 2000. The population is projected to grow to just over 4,500 by 2025.

Lakeview can experience very strong nighttime inversions that break up with daytime solar heating. In the wintertime, arctic air masses frequently move over the Goose Lake Basin. Temperatures can remain well below freezing for several weeks at a time. Winter nights are commonly clear and cool in the basin.

#### 2. Nonattainment History of the Lakeview Area

On July 1, 1987 (52 FR 24634), the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). See 40 CFR 50.6. The 24-hour primary PM<sub>10</sub> standard is 150 micrograms per cubic meter (µg/m<sup>3</sup>), with no more than one expected exceedance per year over a three year period. The annual primary PM<sub>10</sub>

standard is 50  $\mu\text{g}/\text{m}^3$  expected annual arithmetic mean over a three year period. The secondary  $\text{PM}_{10}$  standards are identical to the primary standards.

By operation of law upon enactment of the 1990 Clean Air Act Amendments, Lakeview, Oregon was designated "unclassifiable" for  $\text{PM}_{10}$  due to a lack of air quality monitoring data (see Clean Air Act section 107(d)(4)(B)(iii)). The State of Oregon subsequently conducted monitoring in the Lakeview area to verify  $\text{PM}_{10}$  concentrations and determine if its designation status should be revised.

Based on monitoring data showing violation of the  $\text{PM}_{10}$  standard, on December 29, 1992, the Governor of Oregon requested that Lakeview be redesignated to nonattainment for  $\text{PM}_{10}$ . 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  $\text{PM}_{10}$  and classified it as moderate effective December 25, 1993 (58 FR 49931).

The State developed a nonattainment area SIP revision designed to bring about attainment of the  $\text{PM}_{10}$  NAAQS. Oregon's Clean Air Act Part D initial  $\text{PM}_{10}$  plan (nonattainment area plan) for the Lakeview  $\text{PM}_{10}$  nonattainment area was submitted on June 1, 1995. EPA approved the Lakeview  $\text{PM}_{10}$  nonattainment area plan on September 21, 1999. 64 FR 51051.

In order for the Lakeview nonattainment area to be redesignated to attainment for  $\text{PM}_{10}$ , a 10-year maintenance plan and redesignation request is required for the area. A SIP revision containing these elements was submitted to EPA on October 25, 2005. We are approving both these elements in this action.

### 3. Description of the Air Quality Problem

The Lakeview area violated the Federal 24-hour  $\text{PM}_{10}$  standard of 150  $\mu\text{g}/\text{m}^3$  on multiple dates in 1991, 1992, 1993, and 1994. The highest 24-hour average  $\text{PM}_{10}$  concentration of 256  $\mu\text{g}/\text{m}^3$  was recorded on January 27, 1993. The last 24-hour exceedance of 184  $\mu\text{g}/\text{m}^3$  was recorded on January 19, 1994.

Higher levels of  $\text{PM}_{10}$  are typically a wintertime problem in Lakeview due to temperature inversions that trap particulate matter emissions in the area. Wintertime emissions sources include area sources (wood stoves/fireplace emissions and fugitive dust) and industrial sources.

There have been no  $\text{PM}_{10}$  exceedances in Lakeview since 1994. Based on data measured after 1994, the Lakeview area

attained the 24-hour  $\text{PM}_{10}$  NAAQS by the Clean Air Act deadline of December 31, 1999.

The area has never exceeded the annual NAAQS of 50  $\mu\text{g}/\text{m}^3$ . The highest annual average  $\text{PM}_{10}$  concentration for Lakeview was 31.7  $\mu\text{g}/\text{m}^3$  in 1992. The area meets the annual  $\text{PM}_{10}$  NAAQS.

## II. Review of Maintenance Plan

### A. What Criteria Did EPA Use To Review the Maintenance Plan?

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of Section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance (*i.e.*, continued attainment) of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, the  $\text{PM}_{10}$  maintenance plan for the Lakeview nonattainment area complies with each of these requirements.

#### 1. Attainment Emissions Inventory (and Future Year Inventory)

The State submitted a  $\text{PM}_{10}$  attainment emissions inventory for 2001, a year in which no  $\text{PM}_{10}$  exceedances occurred and one of the five years used to determine the area's  $\text{PM}_{10}$  design value for the maintenance plan. Based on the 2001 worst case day emissions inventory, area sources (mainly wood stoves/fireplace emissions and fugitive dust) account for 59 percent of the emissions. The rest are attributed to industrial sources, onroad sources, nonroad sources and natural sources. These account for 28 percent, 11 percent, 1 percent, and 1 percent, respectively. Annually, area sources accounted for 40 percent of the emissions, with industrial, onroad,

nonroad, and natural sources accounting for 30 percent, 21 percent, 8 percent, and 1 percent, respectively.

The state also submitted a 2017 emissions inventory to correspond with the end of the 10 year period covered by the Lakeview maintenance plan. The total emissions projected for 2017 are about 12 percent higher than those of the 2001 attainment inventory on a worst case day and 31 percent higher annually. The increase is primarily due to the use of allowable emissions from the existing point sources, and not primarily due to a projected increase in actual emissions. The projected growth in population, households, and industrial employment is expected to be about 1 percent per year and vehicle miles traveled (VMT) are projected to increase at 1.7 percent per year. In addition to the VMT projection of 1.7 percent per year, an additional ten percent was added to VMT to address future unanticipated transportation projects.

Based on review of the emissions inventories, EPA concludes that the methods used to develop the emissions inventories are consistent with EPA guidelines. The assumptions and calculations were checked and found to be thorough and comprehensive. In sum, the State has adequately developed an attainment emissions inventory for 2001 that identifies the levels of emissions of  $\text{PM}_{10}$  in the area that is sufficient to attain the NAAQS. Further, the State has adequately developed a future year (2017) inventory for use in demonstrating maintenance with the NAAQS at least ten years after redesignation.

#### 2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act,  $\text{PM}_{10}$  areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling. The demonstration should be for a period of 10 years following the redesignation.

EPA approved the use of proportional roll-back with receptor analysis for the Lakeview attainment demonstration. 64 FR 51051 (September 21, 1999). The proportional rollback approach assumes

that future air quality levels are directly proportional to increases or decreases in total emissions for the area. Receptor analysis (chemical mass balance (CMB) in this case) determines the amount and kind of emission reductions that are required to attain the NAAQS. Using this combined approach, DEQ concluded that a significant reduction in woodsmoke would bring the total 24-hour PM<sub>10</sub> concentration below the NAAQS. The State subsequently implemented control measures to reduce woodsmoke, and soon after, the area's PM<sub>10</sub> levels dropped. As of December 31, 1997 (which was prior to the area's Clean Air Act deadline), air quality data showed the Lakeview area attained the PM<sub>10</sub> NAAQS.

To demonstrate the area will continue to maintain the PM<sub>10</sub> NAAQS, DEQ relied on the same level of modeling as was used for the attainment demonstration. DEQ used actual 24-hour emissions for 2001, the area's 2001 design value, and the projected 24-hour emissions for the maintenance year of 2017 to estimate 24-hour PM<sub>10</sub> levels in 2017. To predict worst case 2017 annual PM<sub>10</sub> concentrations, DEQ used the increase in emissions from 2001 (actual emissions) to 2017 (projected emissions). Based on these assumptions, DEQ's modeling results show the estimated 24-hour PM<sub>10</sub> concentration for Lakeview on a worst case day in 2017 is 122 µg/m<sup>3</sup>. The estimated annual concentration for Lakeview in 2017 is 26 µg/m<sup>3</sup>.

In sum, the modeling results show that the Lakeview area will meet both the 24-hour and annual PM<sub>10</sub> NAAQS at least until 2017. We therefore conclude that the State meets the requirements under section 175A of the Act to demonstrate maintenance of the NAAQS for PM<sub>10</sub>.

### 3. Monitoring Network

DEQ has operated an ambient air quality monitoring network for PM<sub>10</sub> in Oregon since the mid 1980s. The State network includes one monitoring site in Lakeview and utilizes EPA reference or equivalent method monitors and routine precision and accuracy checks of the monitoring equipment and makes necessary maintenance performed when warranted. EPA routinely reviews the State monitoring program and it meets Federal requirements.

### 4. Verification of Continued Attainment

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan

should contain provisions for continued operation of air quality monitors that will provide such verification. The Lakeview maintenance plan provides for continued ambient monitoring in the area.

### 5. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to correct promptly any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under Section 172(c)(9). For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. At a minimum, a contingency plan must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

Under the maintenance plan, the State will continue to implement the measures contained in its Part D nonattainment plan. The measures carried over address the following sources: residential woodstoves, outdoor burning activities, winter road sanding, forest burning, an existing industrial source, and fugitive dust. With regard to new industrial sources, once Lakeview is redesignated to attainment and becomes a maintenance area, the PSD and maintenance NSR programs apply instead of the nonattainment NSR program. This means that Best Achievable Control Technology (BACT) will apply instead of Lowest Achievable Emission Rate (LAER) technology and the requirement to demonstrate compliance with a growth allowance cap (a provision specific to Oregon that is not required by PSD) and PSD increment will apply instead of the requirement to obtain offsets. By having maintenance NSR requirements in addition to PSD requirements, the Lakeview PM<sub>10</sub> maintenance plan goes beyond what is required by the Clean Air Act.

In addition to continuing to implement the measures contained in the Part D nonattainment area plan, the State provides for additional contingency measures under a "phased" approach. Phase One is triggered if PM<sub>10</sub> concentrations equal or exceed 93 percent (140 µg/m<sup>3</sup>) of the 24-hour or 90 percent (45 µg/m<sup>3</sup>) of the annual NAAQS. If Phase One is triggered, the air quality committee and DEQ will evaluate the cause of the exceedance and recommend strategies to be

considered for implementation. Within six months of the trigger, the committee will evaluate the cause of the near exceedance and if necessary, identify and recommend an action plan with a schedule for implementation of additional strategies as necessary to prevent an exceedance or violation of the PM<sub>10</sub> standards. The schedule will include automatic implementation of more stringent requirements should Phase Two need to be implemented.

Phase Two is triggered if a violation of the PM<sub>10</sub> standard occurs and is validated by DEQ. If Phase Two is triggered, reinstatement of nonattainment Part D New Source Review requirements for major sources of PM<sub>10</sub> will automatically be implemented. In addition, strategies developed under Phase One, or re-evaluated under Phase Two, will be implemented on a schedule in an action plan, with all actions permanent and enforceable. The contingencies strategies to be considered include alternative heating systems, industrial strategies, a mandatory woodstove curtailment program, forest slash burning strategies, an uncertified woodstove ordinance, and outdoor burning restrictions.

In carrying over all the control and contingency measures from the moderate area plan and providing for additional contingency measures under its phased approach, the Lakeview maintenance plan meets the contingency plan requirements under Section 175A of the Act.

### B. What Do We Conclude About the Maintenance Plan?

Based on our review of the Lakeview PM<sub>10</sub> maintenance plan and for the reasons discussed above, we conclude that the requirements for an approvable maintenance plan under the Act have been met. Therefore, we are approving the maintenance plan for PM<sub>10</sub> submitted for the Lakeview nonattainment area.

## III. Review of Redesignation Request

### A. What Criteria Did EPA Use To Review the Request for Redesignation?

The criteria used to review the redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, dated September 4, 1992, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment*. Section 107(d)(3)(E) of the Act states that the EPA can redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.

2. The Administrator has fully approved the applicable implementation plan under Section 110(k).

3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under Section 110 and Part D.

5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under Section 175A.

#### 1. Attainment of the NAAQS

According to the Calcagni memorandum, the demonstration that the area has attained the PM<sub>10</sub> NAAQS involves submitting ambient air quality data from an ambient air monitoring network representing peak PM<sub>10</sub> concentrations. The data also should be recorded in the EPA's Air Quality System (AQS) database. The 24-hour PM<sub>10</sub> NAAQS is 150 µg/m<sup>3</sup>. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. 40 CFR 50.6. To make this determination, three consecutive years of complete ambient air quality monitoring data must be collected in accordance with federal requirements (40 CFR Part 58, including appendices).

Oregon's redesignation request for the Lakeview PM<sub>10</sub> nonattainment area is based on valid ambient air quality data for 1991 through 2003. These data were collected and analyzed according to 40 CFR 50.6 and 40 CFR Part 50, Appendix J and stored in EPA's Air Quality System (AQS). These data meet minimum quality assurance requirements and have been certified by the State as being valid.

EPA reviewed the 1991–2004 PM<sub>10</sub> data reported to EPA's Air Quality System (AQS) for the Lakeview nonattainment area. There have been no exceedances of the 24-hour PM<sub>10</sub> standard since 1994, and the area has attained the standard (the average number of expected exceedances averaged over a three year period has been less than or equal to one) since the three year period ending on December 31, 1997.

The annual PM<sub>10</sub> NAAQS is 50 µg/m<sup>3</sup>. To determine attainment, the expected annual mean PM<sub>10</sub> concentration, which is the average of the weighted annual mean for three consecutive years, is compared to the annual standard. The weighted annual mean for each year,

1991 through 2004 for Lakeview, is below 50 µg/m<sup>3</sup>. Because these values are below the 50 µg/m<sup>3</sup> standard, the nonattainment area is in attainment with the annual PM<sub>10</sub> NAAQS.

The Lakeview nonattainment area in Oregon attained the 24-hour and annual PM<sub>10</sub> NAAQS as of December 31, 1999, as required by the Clean Air Act. The area continues to be in attainment with both the 24-hour and annual PM<sub>10</sub> NAAQS.

#### 2. SIP Nonattainment Area Plan Approval Under Section 110(k)

In order for an area to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act.

Oregon's Clean Air Act Part D initial PM<sub>10</sub> plan for the Lakeview PM<sub>10</sub> nonattainment area was submitted on June 1, 1995. EPA approved the Lakeview PM<sub>10</sub> nonattainment area plan on September 21, 1999. 64 FR 51051. Thus, the area has a fully approved nonattainment area SIP.

#### 3. Permanent and Enforceable Improvement in Air Quality

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emissions reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emissions reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Improvements in air quality in the Lakeview nonattainment area are reasonably attributed to permanent and enforceable emissions reductions. A significant drop in peak PM<sub>10</sub> concentrations occurred in the 1994–1995 timeframe, coinciding with implementation of the area's voluntary woodstove curtailment program and a mandatory woodstove change-out program. In addition to the voluntary woodstove curtailment program and the mandatory woodstove change-out program, Lakeview's permanent and enforceable control measures include a mandatory woodstove certification program requiring all new woodstoves sold in the State to be laboratory tested for emissions and efficiency prior to sale. In addition, DEQ relied on its major new source review program as a growth management strategy for industry.

The State also has demonstrated that the improvement in air quality was not

due to either economic or meteorological conditions. Lakeview has had a relatively steady population and unemployment rate since the early 1990s through 2003. The area's PM<sub>10</sub> reductions do not appear to be the result of an economic recession.

With regard to meteorology, DEQ compared the stagnation conditions during the 1991–92 through 1993–94 exceedance period to meteorological conditions in more recent years. In the past thirteen-year period (1991–92 to 2003–04) the most stagnant PM<sub>10</sub> season was the 1991–92 season when PM<sub>10</sub> levels were high. The least stagnant PM<sub>10</sub> season was in 2002–03 when the PM<sub>10</sub> concentrations were low. DEQ concluded that although it appears that PM<sub>10</sub> concentrations seem to follow weather patterns and weather patterns show less poor ventilation recently, PM<sub>10</sub> concentrations have declined at a greater rate than ventilation has improved. We agree with DEQ's analysis and that it is reasonable to conclude that the steady decrease in PM<sub>10</sub> concentrations from the early 1990s to the early 2000s is due to permanent and enforceable control measures and not to a change in economic or meteorological conditions.

#### 4. Section 110 and Part D Requirements

Before EPA may approve a redesignation request, the applicable programs under section 110 and Part D that were due prior to the submission of a redesignation request must be adopted by the State and approved by EPA into the SIP.

##### a. Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment area plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling; and provisions for public and local agency participation.

The Administrator has fully approved the applicable implementation plan under Section 110(k). In 40 CFR 52.1972, EPA has approved Oregon's SIP for the attainment and maintenance of the national standards under Section

110. We also fully-approved Oregon's nonattainment NSR program, most recently on January 22, 2003. 68 FR 29530. In addition, Oregon has a fully approved Prevention of Significant Deterioration (PSD) program, also approved on January 22, 2003. 68 FR 29530. See Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

b. Part D Requirements

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM<sub>10</sub> nonattainment areas must meet the applicable general provisions of subpart 1 and the specific PM<sub>10</sub> provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Lakeview nonattainment area.

i. Section 172(c) Plan Provisions

This section contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the general preamble to Title I (57 FR 13498 (April 16, 1992)). The requirements for reasonable further progress, identification of certain emissions increases, emissions inventory, and other measures needed for attainment are satisfied by the nonattainment area plan submitted for the Lakeview nonattainment area and approved on September 21, 1999. 64 FR 51051.

ii. Subpart 4 Requirements

As a moderate PM<sub>10</sub> nonattainment area, the Lakeview, Oregon area must meet Part D, subpart 4, sections 189(a), (c), and (e) requirements before the area can be redesignated to attainment. These requirements must be fully approved into the SIP:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also

apply to major stationary sources of PM<sub>10</sub> precursors, except where the Administrator determined that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area.

(e) Permit program under section 173 for the construction and operation of new and modified major stationary sources of PM<sub>10</sub>.

EPA approved the nonattainment area plan for the Lakeview nonattainment area, which met the initial requirements of the 1990 Clean Air Act for moderate PM<sub>10</sub> nonattainment areas on September 21, 1999. 64 FR 51051. This plan met requirements for RACM/BACM, demonstrating attainment, quantitative milestones, PM<sub>10</sub> precursors, contingency measures, and quantitative milestones for demonstrating RFP. As mentioned above, the provisions related to NSR were most recently approved in the Oregon SIP most recently approved on January 22, 2003. 68 FR 29530. Oregon also has a fully approved PSD program, also approved on January 22, 2003. 68 FR 29530. See Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

5. Transportation Conformity

Under section 176(c) of the Act, transportation plans, programs and projects in nonattainment or maintenance areas that are funded or approved under Title 23 U.S.C. or the Federal Transit Laws must conform to the applicable SIP. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan are less than or equal to the motor vehicle emissions level or "budget" established in the SIP for the maintenance year and other analysis years.

DEQ has developed a PM<sub>10</sub> MVEB for Lakeview through 2017 that meets the transportation conformity criteria in 40 CFR 93.118(e)(4). The motor vehicle emissions budget is established for all years. The budget is as follows:

**LAKEVIEW PM<sub>10</sub> MOTOR VEHICLE EMISSIONS BUDGET THROUGH 2017**  
[Pounds PM<sub>10</sub>/24-hour winter day]

Year	All years
Motor Vehicle Emissions Budget	311

The TSD summarizes how the PM<sub>10</sub> motor vehicle emissions budget meets the criteria contained in the conformity rule at 40 CFR 93.118(e)(4).

6. Maintenance Plans

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. A State may submit both the redesignation request and the maintenance plan at the same time and rulemaking on both may proceed on a parallel track.

On October 25, 2005, DEQ submitted a PM<sub>10</sub> maintenance plan and redesignation request for the Lakeview nonattainment area. In Section II above, we evaluated the plan and concluded that the requirements for an approvable maintenance plan under the Act have been met.

*B. What Do We Conclude About the Request for Redesignation?*

Based on our evaluation of DEQ's October 25, 2005 SIP submittal, we conclude that all the requirements for redesignation in Section 107(d)(3)(E) have been met. Therefore, we are redesignating of the Lakeview PM<sub>10</sub> nonattainment area to attainment.

**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. 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. 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 May 22, 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: February 24, 2006.

**Julie M. Hagensen**,  
*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 PM<sub>10</sub> maintenance plan and requested redesignation of the Lakeview PM<sub>10</sub> nonattainment area to attainment for PM<sub>10</sub>. 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 PM<sub>10</sub> 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) .....	5/22/06	Attainment.		

\* \* \* \* \*

[FR Doc. 06-2701 Filed 3-21-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[EPA-HQ-OPP-2006-0053; FRL-7766-8]

**Imidacloprid; Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of imidacloprid in or on oats and rye. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 22, 2006. Objections and requests for hearings must be received on or before May 22, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2006-0053. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7546; e-mail address: [kenny.dan@epa.gov](mailto:kenny.dan@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

**II. Background and Statutory Findings**

In the **Federal Register** of January 27, 2006 (71 FR 4580) (FRL-7759-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F7020) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.472 be amended by establishing a tolerance for combined residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, in or on oats, grain at 0.5 parts per million (ppm); oats, forage at 2.0 ppm; oats, hay at 6.0 ppm; oats, straw at 3.0 ppm; rye, grain at 0.5 ppm; rye, forage at 2.0 ppm; rye, hay at 6.0 ppm; and rye, straw at 3.0 ppm. In order to correct a typographical error in the original petition, the proposed tolerance levels for oats, grain and rye, grain were subsequently revised to 0.05 ppm. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. \* \* \*

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.