

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, Carbon monoxide, Incorporation by reference, Reporting and recordkeeping requirements.

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

Dated: November 29, 1993.

Valdas V. Adamkus,  
Regional Administrator.

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. 7401-7671q.

#### Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(95) to read as follows:

##### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(95) On October 16, 1992, the State of Ohio submitted the tailpipe test inspection and maintenance program revisions to its carbon monoxide implementation plan for Cuyahoga County.

(i) Incorporation by reference.  
(A) Ohio Administrative Code: amended rules, 3745-26-01 through 3745-26-09, effective May 15, 1990, and new rules, 3745-26-10 and 3745-26-11, effective May 15, 1990.  
(ii) Additional materials—remainder of the State submittal.

(A) Letter from the Director, Ohio Environmental Protection Agency, dated November 18, 1992, and additional materials.

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BILLING CODE 6560-50-F

#### 40 CFR Part 52

[OR12-2-6161; FRL-4810-1]

#### Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is approving the revisions to the State of Oregon Implementation Plans which were submitted by the State of Oregon Department of Environmental Quality (ODEQ) for the purpose of bringing about the attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). The implementation plan was submitted by ODEQ on November 15, 1991, to satisfy certain Federal Clean Air Act requirements for an approvable moderate PM<sub>10</sub> nonattainment area SIP for Grants Pass, Oregon. This action to approve this plan has the effect of making requirements adopted by the ODEQ federally enforceable by EPA.

**EFFECTIVE DATE:** February 15, 1994.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at the following: Jerry Kurtzweg ANR-443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101 and State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204-1390.

**FOR FURTHER INFORMATION CONTACT:** Rindy Ramos, Air Programs Development Section (AT-082), US Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553-6510.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Grants Pass, Oregon, area was designated nonattainment for PM<sub>10</sub> and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.<sup>1</sup> See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.<sup>2</sup> EPA has issued a

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

<sup>2</sup> Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM<sub>10</sub> nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

"General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those state submittals containing moderate PM<sub>10</sub> nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 10, 1993, EPA announced its proposed approval of the moderate nonattainment area PM<sub>10</sub> SIP for Grants Pass, Oregon (58 FR 13230-13234). In that rulemaking action, EPA described its interpretations of Title 1 and its rationale for proposing to approve the Grants Pass PM<sub>10</sub> SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate PM<sub>10</sub> nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. 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 determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM<sub>10</sub> nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM<sub>10</sub> by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without

further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM<sub>10</sub> NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544).

## II. Response To Comments

EPA received no comments on its March 10, 1993, (58 FR 13230-13234) Federal Register proposal to approve the Grants Pass moderate nonattainment area PM<sub>10</sub> SIP as a revision to the State of Oregon Air Quality Control Program, Volume 2, The Federal Clean Air Act State Implementation Plan (and other State Regulations).

## III. This Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565-13566). In this action, EPA is approving the plan submitted to EPA on November 21, 1990, as revised by addenda submitted on November 15, 1991 (examined together as a comprehensive submittal for the area). EPA has determined that the submittal meets all of the applicable requirements of the Act. Among other things, the Oregon Department of Environmental Quality has demonstrated the Grants Pass moderate PM<sub>10</sub> nonattainment area will attain the PM<sub>10</sub> NAAQS by December 31, 1994. Note that EPA's action includes approval of the contingency measures for the Grants Pass nonattainment area.

Subsequent to the public notice proposing approval of the Grants Pass PM<sub>10</sub> SIP, EPA determined that the Oregon Revised Statute Chapter 468, as amended in 1991, failed to provide sufficient authority to ensure that the industrial source control measures contained in the Grants Pass PM<sub>10</sub> SIP could be adequately enforced. Specifically, ORS 468.126(1) provided that penalties could not be assessed against a source for permit violations unless the state first provided notice of the violation to the source, and further, if within five days, the source came into compliance or provided an adequate schedule to come into compliance in the future, no penalties could be assessed.

EPA informed the Oregon Department of Environmental Quality that this provision was unacceptable to the extent it applied to permit limits which were relied on to attain, maintain or demonstrate attainment with a NAAQS.

On September 3, 1993, the Governor of Oregon signed into law new legislation correcting this deficiency. The new law provides that the five-day advance notice provision required by ORS 468.126(1) does not apply if the

notice requirement will disqualify a state program from Federal approval or delegation. See Oregon Senate Bill 86, 1993 Session, § 3 (1993) to be codified at ORS 468.126(2)(e). Because the notice provision bars civil penalties from being imposed for certain permit violations, application of ORS 468.126(1) fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval. See section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the notice requirement would disqualify this PM<sub>10</sub> program from Federal approval. Thus, the state has acknowledged that, pursuant to ORS 468.126(2)(e), the notice provision in ORS 468.126(1) will not apply to violations of SIP requirements contained in permits, including permits containing industrial source control requirements, relied upon to attain, maintain or demonstrate attainment with a NAAQS.

## IV. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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 February 15, 1994. 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)) (See 42 U.S.C. 7607 (b)(2))

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

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

**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: November 11, 1993.

Gerald A. Emison,  
Acting Regional Administrator.

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. 7401-7671q.

**Subpart MM—Oregon**

2. Section 52.1970 is amended by adding paragraph (c)(99) to read as follows:

**§ 52.1970 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(99) On November 21, 1990, the Director of the Department of Environmental Quality (ODEQ) submitted a State Implementation Plan for Particulate Matter, Grants Pass, Oregon, Moderate Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM<sub>10</sub>. On November 15, 1991, the Director of ODEQ submitted an Addendum to the November 21, 1990 submittal.

(i) Incorporation by reference.  
(A) November 21, 1990 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting revisions to the Oregon state implementation plan.

(B) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting revisions to the Oregon state implementation plan.

(C) State Implementation Plan for Particulate Matter, Grants Pass, Oregon Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM<sub>10</sub> dated November 1990, adopted by the Environmental Quality Commission on November 2, 1990 and effective on November 2, 1990.

(D) PM<sub>10</sub> Control Strategy for Particulate Matter (Addendum) Grants Pass, Oregon Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM<sub>10</sub> dated October 1991, adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

[FR Doc. 93-30774 Filed 12-16-93; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[AZ-930-4210-06; AZA-13010]

**43 CFR Public Land Order 7022****Revocation of Secretarial Order Dated June 30, 1908; Arizona**

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Secretarial Order dated June 30, 1908, insofar as it

affects the remaining 41.69 acres of National Forest System land withdrawn for use as the Payson Administrative Site. The land is no longer needed for this purpose, and the revocation is needed to accommodate a proposed land exchange under the General Exchange Act of 1922. The original withdrawal, containing 125.50 acres, has been reduced in size over the years to accommodate other uses and needs. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land is located within the town limits of Payson, and therefore, is not subject to mineral leasing.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated June 30, 1908, which withdrew National Forest System land for use as the Payson Administrative Site, is hereby revoked insofar as it affects the remaining 41.69 acres described below:

**Gila and Salt River Meridian****Tonto National Forest**

T. 10 N., R. 10 E.,  
Sec. 5, lot 6, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , and  
W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 8, lot 1, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 9, lot 2.

The area described contains 41.69 acres in Gila County.

2. At 10 a.m. on January 18, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: December 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-30733 Filed 12-16-93; 8:45 am]

BILLING CODE 4310-32-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 625**

[Docket No. 930932-3314; I.D. 081693C]

**Summer Flounder Fishery**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the conservation and management measures contained in Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine their summer flounder commercial quota. The intent of Amendment 5 is to provide a mechanism within the overall coastwide quota to give the states flexibility in quota management in order to respond to changes in landing patterns or emergency situations.

EFFECTIVE DATE: January 18, 1994.

ADDRESSES: Copies of Amendment 5, the environmental assessment (EA), and the regulatory impact review (RIR) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Amendment 5 was prepared by the Council in consultation with the ASMFC and the New England and South Atlantic Fishery Management Councils. A notice of availability for