

Furthermore, as required in paragraph 110(a)(2)(D), the SIP protects the NAAQS in other States; Wisconsin's models show that the SO₂ emissions are most concentrated in the immediate area of the source, and since the models show that allowable SO₂ emissions would not interfere with local attainment of the NAAQS, it is clear that the emissions also would not interfere with any other State's attainment of the NAAQS.

Based on its analysis of the State submittal, USEPA finds the proposed revision an appropriate and useful addition to the SIP.

C. Action

The USEPA approves Wisconsin's Douglas County SO₂ submittal of November 24, 1992 with supplements on October 5, 1993 and December 9, 1993. With this action, USEPA incorporates State orders AM-91-816A and NWD-89-08 into the SIP, making these orders federally enforceable. State permit 90-RV-09, created under a federally approved New Source Review program (40 CFR 52.2570 (42)), is already federally enforceable.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on October 24, 1994. However, if we receive adverse comments by September 23, 1994, USEPA will publish a document that withdraws today's action and will address all public comments in a subsequent final rule based on the proposal published in the proposal section of this Federal Register. The public comment period will not be extended or reopened.

III. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these

tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (as published at 54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 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)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: May 23, 1994.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, 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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c) (74) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(74) On November 24, 1992, the State of Wisconsin requested a revision to the Wisconsin State Implementation Plan (SIP) to maintain the National Ambient Air Quality Standards for SO₂ in Douglas County Wisconsin. Included were State orders and permits limiting emissions from CLM Corporation lime kilns and requiring Continuous Emission Monitoring Systems on these kilns.

(i) Incorporation by reference.

(A) Wisconsin Order AM-91-816A issued by WDNR to CLM Corporation on June 13, 1991. Wisconsin Administrative Order NWD-89-08 issued by the WDNR to CLM Corporation on December 20, 1989.

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BILLING CODE 6560-50-F

40 CFR Part 52

[OR-16-1-5536a; OR-43-1-5523a; FRL-5025-8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves the state implementation plan (SIP) revision submitted by the State of Oregon 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-10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM-10 SIP for the Eugene-Springfield, Oregon.

PM-10 nonattainment area. In addition, EPA approves title 16 of the Lane Regional Air Pollution Authority for inclusion into the Oregon SIP. Title 16 establishes permanent rules prohibiting the use of woodstoves and other solid-fuel space heating devices under certain circumstances in Lane County and the cities of Eugene and Springfield, Oregon.

DATES: This final rule will be effective on October 24, 1994 unless adverse or critical comments are received by September 23, 1994. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT-082), EPA, Docket #OR-16-1-5536, 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, EPA, 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, Air & Radiation Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204-1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, 1200 Sixth Avenue, AT-082, Seattle, Washington, 98101, (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

The area within the Eugene-Springfield, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.¹ See 56 FR 56694 (November 6, 1991) and 40 CFR 81.339. The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act.²

¹ 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.*

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 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 this document and supporting information.

EPA has issued a "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-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale. In this rulemaking action for the State of Oregon's moderate PM-10 SIP for the Eugene-Springfield nonattainment area, EPA is approving its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely comments received by the date indicated above.

Those states containing initial moderate PM-10 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 3 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-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the

construction and operation of new and modified major stationary sources of PM-10 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-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address that submittal containing the new source review permit program in a separate document.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, EPA is approving the plan revision submitted to EPA on November 15, 1991. EPA has determined that the submittal meets all of the applicable requirements of the Act.

Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.³ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Oregon and Lane Regional Air Pollution Authority (LRAPA) held a concurrent public hearing on the original Eugene-Springfield PM-10 plan on January 30, 1990. On January 31, 1991, the Oregon Environmental Quality Commission

³ Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

(OEQC), adopted the plan as part of the Oregon SIP. The State and LRAPA subsequently held a concurrent public hearing on an addendum to the plan on October 1, 1991, in Springfield, Oregon. This addendum, including appendix L, was adopted by the Oregon Department of Environmental Quality (ODEQ) on November 8, 1991. The original plan and the addendum were submitted to EPA on November 15, 1991, as a revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated May 7, 1992, was forwarded to the Director of ODEQ indicating the completeness of the submittal and the next steps to be taken in the review process. In this action EPA is approving the State of Oregon's PM-10 SIP submittal for the Eugene-Springfield PM-10 nonattainment area and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, 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. See, e.g., section 110(a)(2)(K) of the Act. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The 1985 base year emission inventory developed for the Eugene-Springfield UGB identified the major sources of PM-10 concentrations during 24-hour worst case winter periods as residential wood combustion (68%), industrial emissions (26%), fugitive dust (4%), and other sources, including but not limited to, transportation, open and prescribed burning (2%). Annual emissions for the same timeframe were residential wood combustion (34%), industrial emissions (54%), fugitive dust (6%), and other sources (5%).

EPA is approving the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of

sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.⁴

3. RACM (Including RACT)

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561).

LRAPA performed a technical and cost analysis to evaluate available control measures. This analysis is presented in appendix E and F to the SIP. Using EPA modeling guidelines and protocols, the analysis showed that with some exceptions, local industrial sources currently meet or exceed RACT. Further, RACM (including RACT) does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment. 57 FR 13540-13544. Based on the available control measures adopted (described below), the SIP demonstrates that attainment of the PM-10 NAAQS will be achieved by December 31, 1992 (two years prior to the CAA attainment date of December 31, 1994). The SIP also demonstrates continued maintenance of the NAAQS between December 1992 and the year 2000. PM-10 emissions from industrial point sources (26%), primarily wood products industry, had substantially less of an impact on the 24-hour standard than residential wood combustion (68%). A cost benefit comparison of alternate strategies showed that implementation of a woodsmoke curtailment program would achieve expeditious air quality improvements at a much lower cost than would additional point source control. Accordingly, EPA is approving the existing industrial controls as meeting the RACM (including RACT) requirement.

A. Mandatory Woodburning Curtailment Program

A mandatory woodburning curtailment program became fully implemented on November 1, 1991. Each of the three jurisdictions in the nonattainment area enacted ordinances prohibiting the use of solid-fuel space

⁴The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM-10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act. See section 193 of the Act.

heating devices under certain conditions. Enforcement of the ordinances have been delegated by Lane County, the City of Eugene, and the City of Springfield to LRAPA. Prior to the mandatory program, a voluntary program had been in place for five years. The following is a brief discussion of the program's key elements. For a detailed analysis and discussion, the reader is referred to the Technical Support Document (TSD) that corresponds with this action.

During the 1992/1993 woodheating season, LRAPA used a combination advertising campaign using radio and billboard advertising, press releases and taped television public service announcements. In addition, during the last 2½ years, there have been approximately 20 visits with local schools and several presentations to various local groups, e.g. real estate, church. The purpose of these visits was to discuss pertinent elements of the curtailment program, proper woodstove operation and maintenance, and air pollution in general.

Woodburning advisories are made daily by 1 p.m. between the first of November and the end of February via local television and radio stations. An empirical formula (based on the previous 24-hour nephelometer readings and the predicted afternoon ventilation index) is used to predict the present day's PM-10 level. The predicted PM-10 level determines whether a green, yellow, stage I red, or stage II red advisory is issued.

Woodburning curtailment advisories are issued at four levels; 1) a green advisory is made when the ambient PM-10 concentration is expected to be 74 µg/m³ or less, 2) a yellow advisory is issued when the ambient PM-10 concentration is expected to be greater than 75 µg/m³ but less than 88 µg/m³, 3) a Stage I Red advisory is issued when the ambient concentration is expected to be greater than 88 µg/m³ but less than 125 µg/m³, 4) a State II Red advisory is issued when the ambient concentration is expected to be greater than 125 µg/m³.

During a Stage I Red Advisory, any solid fuel space heating device (e.g. certified woodstove, uncertified woodstove, or pellet stove) may be operated provided it does not emit visible emissions. Exemptions to complying with this advisory include sole source and low income.

During a State II Red Advisory, sole source and low income exemptions are granted. Also, pellet stoves may be operated provided they do not emit visible emissions. All other solid fuel

space heating devices are prohibited from operation.

As stated above, LRAPA can grant an exemption from complying with a Stage I and Stage II Red Advisory provided that the solid fuel space heating device is the sole source of heat for a specific residence. Individual exemptions expire on July 1 of each year and must be renewed annually. This exemption shall not be issued by LRAPA after June 30, 1996.

An exemption based on economic need can also be granted. Persons in charge of property who satisfy criteria established under the Low Income Energy Assistance Program as administered by the Lane County Housing Authority and as established by the United States Department of Energy are exempt from Stage I and Stage II Red Advisories. Individual exemptions shall expire on July 1 of each year and must be renewed annually.

The woodburning curtailment program has a surveillance and enforcement element. A standard operating procedure and evaluation measure has been developed for use during red advisories. During surveillance and effectiveness evaluations, infra-red detectors are used at night to detect 'hot' chimneys. During a red advisory, visible emissions will be documented and a Notice of Violation, including those with civil penalties, will be issued. Persons who receive the notice may either pay the fine or appeal the civil penalty. Fines range from \$50.00 to \$400.00.

LRAPA requests a 70% reduction credit for the curtailment program. This requested credit is greater than the 50% generally suggested by EPA for a mandatory curtailment program. However, the recommended 50% credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs." Final judgement of the amount of credit to be granted, is determined by EPA regional offices, based on the program elements outlined in EPA's *Guidance Document for Residential Wood Combustion Emission Control Measures*, EPA-4450/2-89-015, September 1989.

Since implementation of the mandatory program in November 1991, ambient PM-10 concentrations have not deteriorated to the point where the issuance of a red advisory has been needed to protect the NAAQS. Therefore, LRAPA has not conducted a compliance survey during a red advisory. However, during the 1991/1992 and the 1992/1993 woodheating seasons, LRAPA did conduct several surveys during green and yellow advisories. These surveys indicate that

between 52% and 78% of the dwellings equipped with woodstoves were not using wood as a source of home heat.

Even though results from the above surveys are somewhat inconclusive since the surveys were conducted during green and yellow advisories, the results do indicate that LRAPA's public education/awareness program is quite effective. Additionally, preliminary results from a 1992 wood user's survey indicates that between the 1985 base year and 1992, annual PM-10 emissions from home heating have declined by approximately 60%. This corresponds to a 40% reduction in cord wood consumption.

Considering the above program elements, survey results, and the phasing out of the sole source exemptions, EPA believes that the 70% credit is achievable and is being achieved and therefore proposes to accept the credit claimed. EPA has also considered that fact that the area has not violated the 24-hour standard since January, 1987 (first year of a voluntary curtailment program), and has never violated the annual standard. Accordingly, EPA has determined that the mandatory curtailment program is sufficient to meet RACM.

Additionally, even though the area is not in violation of the annual standard, the expected emission reductions to be achieved by this strategy will help insure continued compliance with the annual standard.

B. Other Sources

Where sources of PM-10 contribute insignificantly to the PM-10 problem in the area, EPA's policy is that it would be unreasonable to require the sources to implement potentially available control measures and, therefore, the RACM requirement does not dictate the implementation of such controls. (57 FR 13540).

LRAPA determined through its analysis of the nonattainment area that emissions from fugitive dust sources and emissions from prescribed and open burning activities were not significant sources of PM-10 emissions. On an annual basis, fugitive dust accounts for 6% of the PM-10 emission inventory. Emissions from prescribed and open burning added together account for less than 1% of the nonattainment area's PM-10 emissions on an annual basis. Further, as indicated above, the control measures contained in the SIP provide for expeditious attainment of the PM-10 NAAQS. Therefore, the attainment plan does not include additional control measures for these sources.

EPA has reviewed ODEQ's submittals and associated documentation and

concluded that they adequately justify the control measures to be implemented. Implementation of the Eugene-Springfield PM-10 nonattainment plan control strategy will result in the attainment of the PM-10 NAAQS as expeditiously as practicable and no later than December 31, 1994. By this document, EPA is approving ODEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

As noted, the initial moderate PM-10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the State must show attainment by December 31, 1994, or that attainment is impracticable. The 24-hour PM-10 NAAQS is 150 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$), and the 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 (see 40 CFR 50.6). The annual PM-10 NAAQS is 50 $\mu\text{g}/\text{m}^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu\text{g}/\text{m}^3$ (id.).

LRAPA conducted an attainment demonstration based on dispersion modeling; which, according to EPA's PM-10 SIP Development Guideline (June 1987), is an acceptable method. In order to select the appropriate model, LRAPA followed EPA's "Protocol for Determining the Best Performing Model" (September 1987) in LRAPA's evaluation of the Oregon GRID, WYNDvalley, and ISCST dispersion models. Based on its analysis, Oregon GRID performed within EPA's approved limits of accuracy and was determined to be the best performing model.

The time period selected for the 24-hour modeling analysis was from December 11, 1985 through December 28, 1985. This was a period of extensive poor ventilation with no precipitation, cold temperatures (average daily temperatures near zero degrees centigrade) and light winds (average daily wind speed of 1 to 2 meters per second). In addition, 12 of the 15 exceedances of the 24-hour standard occurred during December 1985. Since the area is in attainment with the annual standard, LRAPA only modeled for

attainment purposes the 24-hour standard.

The uncontrolled 1992 modeled design value was determined to be 333 $\mu\text{g}/\text{m}^3$. Based on the modeling analysis, in order to attain the 24-hour standard throughout the airshed, a 65% reduction in PM-10 emissions at an unmonitored site (referred to in the study as the Scenic site) is needed. The modeling exercise also determined that approximately 97% of the local impact at this site (Scenic site) is from home wood heating. After applying the 70% reduction in wood smoke emissions due to the curtailment program, the modeling exercise demonstrates that attainment of the 24-hour standard can be achieved at this site and throughout the airshed. The demonstration predicted that the 24-hour design concentration in the attainment year of 1992 will be below 150 $\mu\text{g}/\text{m}^3$, thus demonstrating attainment of the 24-hour PM-10 NAAQS. The SIP also demonstrates maintenance of the NAAQS through the year 2000. Ambient data show that the area has never approached an exceedance of the annual standard. Since no violations of the annual NAAQS have been noted and the attainment demonstration shows attainment of the 24-hour NAAQS, no violations of the annual NAAQS are likely. Therefore, EPA has determined that ODEQ has adequately demonstrated that the annual standard has been attained in the Eugene-Springfield nonattainment area. More detailed description of the attainment demonstration is contained in the TSD.

5. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10, also apply to major stationary sources of PM-10 precursors unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539-13540 and 13541-13542).

As previously discussed, LRAPA's technical analysis of candidate control measures indicated that emissions from industrial point sources had substantially less of an impact on the 24-hour standard than residential wood combustion. Previous violations of the 24-hour standard occurred during periods of extensive poor ventilation (stagnation conditions) and cold temperatures. This further supports the dispersion modeling exercise which indicated that approximately 97% of the local impact at the highest modeled site

in the UGB was from woodsmoke emissions and that implementation of the woodsmoke curtailment program would expeditiously demonstrate attainment with the PM-10 NAAQS. Therefore, EPA believes that sources of PM-10 precursors do not contribute significantly to PM-10 levels in excess of the NAAQS and hereby grants the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM-10 precursors.

Note that while EPA is making a general finding for this area about precursor contribution to PM-10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

6. Quantitative Milestones and Reasonable Further Progress

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrates RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the CAA).

While section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first 3-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the 3-year milestone, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM-10 nonattainment areas) (see 57 FR 13539).

As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, submittal to address the SIP revisions due on November 15, 1991, for the initial moderate PM-10 nonattainment areas must demonstrate that two milestones will be achieved (First milestone: November 15, 1991, through November 15, 1994; Second milestone: November 15, 1994, through November 15, 1997).

For the initial PM-10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment

date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone (see 57 FR 13539). For areas that demonstrate timely attainment of the PM-10 NAAQS, the milestones beyond the attainment achievement date should, at a minimum, provide for continued maintenance of the standards.⁵

This SIP demonstrates attainment of the PM-10 NAAQS by December 31, 1992, and maintenance of the NAAQS through the year 2000, satisfying three milestones. Therefore, EPA is approving the submittal as meeting the quantitative milestone requirement currently due. Finally, once a milestone has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Eugene-Springfield area as provided in section 189(c)(2) of the Act.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by LRAPA, ODEQ and EPA (See sections 172(c)(6), 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, *et al.* (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The woodsmoke curtailment program contained in the SIP was addressed above under the section headed "RACM (including RACT)." The SIP provides that this control strategy applies throughout the entire nonattainment area.

Lane County, and the cities of Eugene and Springfield have enacted ordinances prohibiting the use of solid-fuel space heating devices under certain conditions (air stagnation episodes).

Lane County enacted Ordinance Number 9-90 (Lane Code ("LC") 9.120-9.160). Eugene enacted Ordinance Number 19731 (Eugene Code ("EC")

⁵ Section 189(c) of the Act provides that quantitative milestones are to be achieved "until the area is redesignated attainment." However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

6.250-6.270) and Springfield enacted Ordinance Number 5546 (Springfield Code ("SC") 4-8-4). Each municipality also either delegated enforcement of the ordinances to LRAPA (L.C. § 9.145; Springfield Code § 4-8-4(4)), or authorized the City Manager to delegate enforcement to LRAPA (Eugene Code § 6.265). By Administrative Order No. 44-92-10, the Eugene City Manager has delegated authority to LRAPA to administer the ordinance. Thus, each jurisdiction has authorized LRAPA to enforce the solid-fuel space heating device ordinances. In addition, each jurisdiction has authorized LRAPA to use its own regulations and procedures to enforce the ordinances and to impose penalties.

The LRAPA Board of Directors adopted title 16, Home Wood Heating Curtailment Program Enforcement, on July 13, 1993. This rule is the mechanism LRAPA will employ in implementing the above ordinances. It contains, among other things, a civil penalty schedule, a notice of violation procedure, and the procedure to appeal a civil penalty. EPA is approving the above ordinances and title 16 as part of the SIP.

The Eugene-Springfield SIP does not contain additional point source controls to attain the standard, however, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the PM-10 NAAQS. EPA determined that because the five-day advance notice provision required by ORS.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 PM-10 nonattainment area SIP revision.

EPA notified Oregon of the deficiency. 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 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 468.126(2)(e) and agreed that if 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.

ODEQ's submittal and TSD contain further information on enforceability requirements. In addition, the TSD contains a discussion of the personnel and funding intended to support effective implementation of the control strategy.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543-13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM-10 NAAQS by the applicable statutory deadline. The Eugene-Springfield nonattainment area SIP contains the following contingency measures:

a. Uncertified woodstove removal: the 1991 Oregon Legislature authorized by statute the removal and destruction of uncertified woodstoves upon sale of a home within any area that fails to meet the PM-10 SIP attainment date of December 31, 1994. EPA approved these rules (OAR 340-34-200 through 215) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

b. Fugitive Dust: to reduce track out onto public roads, construction sites for commercial, industrial or residential subdivisions within the Eugene-Springfield nonattainment area are required to provide paved track out strips or mud cleaning stations on site. This rule is found in title 39, section 39-055 of LRAPA's contingency measure regulations.

In this action, EPA is approving in its entirety title 39 entitled Contingency for PM-10 Sources in Eugene-Springfield Non-Attainment Area. (Sections 39-001, 39-005, 39-010, 39-015, 39-020, 39-025, 39-030, 39-035, 39-040, 39-050, 39-055, and 39-060 (November 1991)).

c. Open Burning: all open burning would be banned within the nonattainment area. This rule is found in section 39-060 of title 39.

d. Industrial Controls: a contingency plan was developed to reduce industrial emissions should the area fail to attain by the CAA deadline. The regulations requiring controls more stringent than those currently required on significant industrial sources of PM-10 are

contained in title 39. Industrial sources addressed in the plan include wood-waste boilers, veneer plants and dryers, particleboard plants and dryers, air conveying systems and kraft pulp mills.

The industrial contingency limits for the most part reflect ODEQ's industrial source rules for the Medford-Ashland non-attainment area (OAR 340-30-005 through 230). The one exception is the contingency standard for pulp mills. Should the area fail to attain the NAAQS, kraft pulp mills would be required to meet EPA's New Source Performance Standards (NSPS). These control measures would become effective upon a determination by EPA that the area has failed to make reasonable further progress (RFP) or to attain the PM-10 NAAQS and, they would be implemented over a period of two years.

LRAPA estimates that implementation of the contingency measures would reduce wood heating emissions by an additional .5 ton per day and industrial emissions would be reduced by 6.2 tons per day resulting in additional reductions of 45% on a daily basis. On an annual basis, wood heating emissions would be reduced by 53 tons per year and industrial emissions by 1,800 tons per year resulting in additional reductions of over 2000%.

The SIP provides that each of these measures can take effect without further action by the State or EPA, should EPA determine that the Eugene-Springfield nonattainment area has failed to achieve RFP or to attain the PM-10 standard by the statutory attainment date of December 31, 1994.

EPA is approving the Eugene-Springfield nonattainment area contingency measures.

III. Implications of This Action

EPA is approving the plan revision and addendum submitted to EPA for the Eugene-Springfield nonattainment area on November 15, 1991. Among other things, LRAPA has demonstrated that the Eugene-Springfield moderate PM-10 nonattainment area will attain the PM-10 NAAQS by December 31, 1992. Note that EPA's action includes approval of the contingency measures for the Eugene-Springfield nonattainment area. In addition, EPA approves title 16 of the Lane Regional Air Pollution Authority. Title 16 establishes permanent rules prohibiting the use of woodstoves and other solid-fuel space heating devices under certain circumstances in Lane County and the cities of Eugene and Springfield, Oregon.

IV. Administrative Review

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).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should no adverse or critical comments be filed. This final rule will be effective October 24, 1994 unless, by September 23, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this final rule will be effective October 24, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The

EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 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 October 24, 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), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, 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: July 11, 1994.

Chuck Clarke,
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. 7401-7671g.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (108) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(108) On November 15, 1991 the Director of ODEQ submitted amendments to Oregon's SIP to include a PM-10 control strategy for Eugene-Springfield and LRAPA title 39.

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon SIP.

(B) The PM-10 control strategy for Eugene-Springfield, adopted by the OEQC on January 31, 1991, and LRAPA title 39 (Contingency for PM-10 sources in the Eugene-Springfield nonattainment area), adopted by the OEQC on November 8, 1991.

(C) April 13, 1994 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon SIP.

(D) Amendments to Lane Regional Air Pollution Authority Rules as a revision to the Oregon SIP (title 16), adopted by the OEQC on March 11, 1994.

[FR Doc. 94-20738 Filed 8-23-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 180

[PP 3E4255/R2070; FRL-4899-5]

RIN 2070-AB78

Pseudomonas Fluorescens Strain NCB 12089; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* in or on the raw agricultural commodity mushrooms. This exemption from the requirement of a tolerance was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 3E4255/R2070], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field