



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2019-0426, FRL-9998-09-Region 10]

#### **Air Plan Approval: Lane County, Oregon; 2019 Permitting Rule Revisions**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve revisions to the Oregon State Implementation Plan (SIP) submitted on June 13, 2019. The proposed revisions, applicable in Lane County, Oregon, update regulations contained in the SIP to make minor syntax and renumbering changes, add a reference to the electronic public notice option, and update citations to reference materials such as the Code of Federal Regulations (CFR) and the most recent Oregon Source Sampling Manual. The EPA reviewed the submitted revisions and proposes to find they are consistent with Clean Air Act (CAA) requirements.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2019-0426, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

## **I. Background**

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the CAA requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated to address federal requirements and changing air quality issues in the state.

The Oregon Department of Environmental Quality (ODEQ) implements and enforces the Oregon SIP through rules set out in Chapter 340 of the Oregon Administrative Rules (OAR). Chapter 340 rules apply in all areas of the state, except where the Oregon Environmental Quality Commission (EQC) has designated a local agency as having primary jurisdiction.

Lane Regional Air Protection Agency (LRAPA) has been designated by the EQC to implement and enforce state rules in Lane County, and to adopt local rules that apply within Lane County. LRAPA may promulgate a local rule in lieu of a state rule provided: (1) it is as strict as the corresponding state rule; and (2) it has been submitted to and not disapproved by the EQC. This delegation of authority in the Oregon SIP is consistent with CAA section 110(a)(2)(E) requirements for state and local air agencies.

On May 16, 2019, the EQC adopted revised air quality regulations applicable in Lane County that became effective May 17, 2019. On June 13, 2019, the state submitted certain of these rule revisions to the EPA for approval into the Oregon SIP. The submitted changes account for electronic public notice of proposed major source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. We note that some of the adopted changes were not submitted for SIP approval because they administer the new, state-only air toxics permitting program known as Cleaner Air Oregon, established in OAR Chapter 340, Division 245. Cleaner Air Oregon is not part of the federally-approved SIP.

## **II. Evaluation of Submission**

A complete analysis of the LRAPA regulatory changes is included in the docket for this action. As detailed in the analysis and discussed briefly, not all the LRAPA regulatory changes were submitted for incorporation in the SIP. Listed is a summary of the major changes.

### *A. Title 12: General Provisions and Definitions*

Title 12 contains general procedures and definitions used in LRAPA's air quality program. LRAPA made minor changes to clarify rule language throughout the definitions section of this title. LRAPA added a new definition for "toxic air contaminant" to account for the new

state air toxics permitting program and made conforming changes to related definitions in title 12. However, these revisions have limited impact on the federally-approved Oregon SIP because the revisions primarily relate to the new, state-only air toxics rules which are not part of the SIP and were not submitted to the EPA for approval.

Title 12 also includes key reference materials used throughout LRAPA's air quality rules. The submission revises citation dates for these reference materials. First, all references to federal requirements in the CFR now refer to the July 1, 2018 version. Second, all references to the Oregon Source Sampling Manual now refer to the November 2018 edition (previously submitted for approval into the SIP, see 84 FR 33883, July 16, 2019).

We reviewed the submitted changes to title 12 and propose to approve and incorporate them by reference into the Oregon SIP, except all references to "toxic air contaminants" and the state-only air toxics permitting program set forth in OAR Chapter 340, Division 245, because these provisions were not submitted to the EPA for approval.

*B. Title 15: Enforcement Procedure and Civil Penalties*

Title 15 contains enforcement procedures and civil penalties for violations of environmental regulations. In the submission, LRAPA made minor edits to this title for clarity and to correct errors. For example, LRAPA replaced the phrase "pursuant to" with "under" because the word has a plainer meaning and aligns with the recent changes to OAR Chapter 340. In addition, LRAPA corrected references to the federally-defined term "Best Available Control Technology" to match the recent revision to OAR Chapter 340.

We reviewed the submitted changes and propose to find that title 15 continues to provide LRAPA with adequate authority to enforce the SIP as required by section 110 of the CAA and 40 CFR 51.230(b). Consistent with our prior action on title 15 on February 20, 2019, we propose

to approve the changes to this title only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP (84 FR 5000). We are not proposing to incorporate the changes by reference into the CFR, however, because the EPA relies on its independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

*C. Title 31: Public Participation*

Title 31 contains rules to notify the public of certain permit actions and give the public an opportunity to participate in the permitting process. In the submission, LRAPA added electronic noticing (termed e-notice) for draft major new source review (NSR) permits consistent with recent EPA rules published on October 18, 2016 and intended to modernize the process (81 FR 71613).

LRAPA also made updates to this title to address the new, state-only air toxics permitting program. However, the state submitted these public participation rule changes only to the extent the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

We most recently approved revisions to title 31 on October 5, 2018 (83 FR 50274). We found that title 31 was consistent with the CAA and regulatory requirements for public notice of new source review actions in 40 CFR 51.161 Public availability of information, 40 CFR 51.165 Permit requirements, and 40 CFR 51.166 Prevention of significant deterioration of air quality. After reviewing the submitted changes, we find that LRAPA's public participation rules continue

to meet the CAA and the EPA's NSR public notice requirements.

*D. Title 37: Air Contaminant Discharge Permits*

The Oregon Air Contaminant Discharge Permit (ACDP) program is both the federally-enforceable non-title V operating permit program, and the administrative mechanism used to implement the notice of construction and NSR programs. There are six types of ACDPs under state rules: Construction, General, Short Term Activity, Basic, Simple, and Standard. LRAPA made changes to this title to align with changes to OAR Chapter 340 to use plain language, clarify requirements, and reference the new, state-only air toxics permitting program. LRAPA also revised the applicability and jurisdiction section of this title to spell out that a source may not continue to operate if the source's ACDP expires, or is terminated, denied, or revoked.

Certain rules in title 37 are used to implement both the SIP-approved permitting programs and the new, state-only air toxics permitting program. In the submission, the state made clear that it requested approval of the submitted changes to title 37 for purposes of SIP permitting only.<sup>1</sup> We reviewed the submitted changes and find that the program remains consistent with section 110 of the CAA and the EPA's implementing regulations.

### **III. Proposed Action**

The EPA proposes to approve, and incorporate by reference into the Oregon SIP, the submitted changes to LRAPA's regulations, state effective May 17, 2019:

- Title 12 General Provisions and Definitions (005, 020, 025);
- Title 31 Public Participation (0020, 0030, 0040, 0050); and

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<sup>1</sup> The state submitted ACDP permitting rule revisions only to the extent that the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

- Title 37 Air Contaminant Discharge Permits (0010, 0020, 0030, 0040, 0090, 8020).<sup>2</sup>

The EPA also proposes to approve, but not incorporate by reference, the submitted changes to the following sections, state effective May 17, 2019:

- Title 15 Enforcement Procedure and Civil Penalties (005, 018, 020, 025, 030, 045, 055, 060), only to the extent the rules relate to enforcement of the requirements contained in the Oregon SIP.

#### **IV. Oregon Notice Provision**

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

#### **V. Incorporation by Reference**

In this rule, the EPA is proposing to include, in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III. The EPA has made,

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<sup>2</sup> Titles 12, 31, and 37 are proposed to be approved only to the extent the rules apply to 1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and 2) any additional pollutants that are required to be regulated under Part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of title I of the CAA.

and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR



43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: \_\_July 31, 2019.\_\_\_\_\_

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Chris Hladick,  
Regional Administrator,  
Region 10.

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