



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0269, FRL-10001-52-Region 10]

Air Plan Approval; OR: 2018 Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Oregon State Implementation Plan (SIP) submitted on December 11, 2018. The revisions update the SIP to allow for electronic public notice of proposed major stationary source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. The EPA has determined the changes are consistent with Clean Air Act requirements.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0269. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly-available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-6357, or hall.kristin@epa.gov.

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

Table of Contents

- I. Background
- II. Response to Comment
- III. Final Action
- IV. Incorporation by Reference
- V. Oregon Notice Provision
- VI. Statutory and Executive Order Review

I. Background

On December 11, 2018, Oregon submitted revised regulations to the EPA for approval into the Oregon SIP. On July 16, 2019, we proposed to approve the submitted changes (84 FR 33883). The reasons for our proposed approval were stated in the proposed rule and will not be re-stated here. The public comment period for our proposed action ended on August 15, 2019. We received two comments.

II. Response to Comment

The first comment, submitted anonymously, supported the proposed action. The second comment, submitted by Oregon Business & Industry (OBI), also supported the proposed action. In the comment, OBI requested that we make clear in the final rule that the EPA’s action does not approve or incorporate by reference into the Oregon SIP any source obligation or regulatory requirement under the Cleaner Air Oregon program, regardless of whether such obligation or regulation is included in any sections of the Oregon Administrative Rules or in the Source Sampling Manual. We believe our regulatory text amending 40 CFR part 52, subpart MM,

clearly states the scope of our approval and addresses the comment. The full text of the comments are in the docket for this action.

III. Final Action

The EPA is approving, and incorporating by reference, the submitted changes to the following provisions, State effective November 16, 2018:

- Division 200 General Air Pollution Procedures and Definitions (0020, 0035);
- Division 209 Public Participation (0020, 0030, 0040, 0050); and
- Division 216 Air Contaminant Discharge Permits (0020, 0030, 0040, 0090, 8020).

These changes are approved only to the extent the requirements 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.

The EPA is also approving, but not incorporating by reference, the submitted changes to the following provisions, State effective November 16, 2018:

- Division 12 Enforcement Procedure and Civil Penalties (0030, 0053, 0054, 0135, 0140), only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP; and
- Source Sampling Manual, Volume I, 2018 Edition, for purposes of the limits in the Oregon SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by

reference of Oregon Administrative Rules as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the Oregon Department of Environmental Quality 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.

VI. Statutory and Executive Order Review

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,

¹ 62 FR 27968 (May 22, 1997).

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

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 recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 7, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

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

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

2. In §52.1970:

a. Paragraph (c), Table 2, is amended by:

i. Revising entries “200-0020”, “200-0035”, “209-0020”, “209-0030”, “209-0040”, “209-0050”, “216-0020”, “216-0030”, “216-0040”, “216-0090”, “216-8020”; and

ii. Revising footnote number 1; and

b. Paragraph (e), Table 2, is amended by:

i. Revising the undesignated center heading “Division 12—Enforcement Procedure and Civil Penalties”;

ii. Revising entries “12-0030”, “12-0053”, “12-0054”, “12-0135”, and “12-0140”; and

iii. Adding footnote number 1 at the end of the table; and

c. Paragraph (e), Table 5, is amended by revising entry “ODEQ Source Sampling Manual”.

The revisions and addition read as follows:

§52.1970 Identification of plan.

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(c) * * *

TABLE 2 – EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR)¹

State citation	Title/subject	State effective date	EPA approval date	Explanations
CHAPTER 340—DEPARTMENT OF ENVIRONMENTAL QUALITY				
*	*	*	*	*
Division 200—General Air Pollution Procedures and Definitions				
*	*	*	*	*
200-0020	General Air Quality Definitions	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
200-0035	Reference Materials	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
Division 209—Public Participation				
*	*	*	*	*
209-0020	Applicability	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
209-0030	Public Notice Categories and Timing	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
209-0040	Public Notice Information	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	

209-0050	Public Notice Procedures	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
Division 216—Air Contaminant Discharge Permits				
*	*	*	*	*
216-0020	Applicability and Jurisdiction	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
216-0030	Definitions	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
216-0040	Application Requirements	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
216-0090	Sources Subject to ACDPs and Fees	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
216-8020	Table 2—Air Contaminant Discharge Permits	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*

¹ The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they 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.

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(e) * * *

TABLE 2 – OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * *	*	*	* *
Division 12—Enforcement Procedure and Civil Penalties¹				
*	* * *	*	*	* *
12-0030	Definitions	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	* * *	*	*	* *
12-0053	Classification of Violations that Apply to all Programs	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
12-0054	Air Quality Classification of Violations	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	* * *	*	*	* *
12-0135	Selected Magnitude Categories	11/16/2018	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	

12-0140	Determination of Base Penalty	11/16/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
*	*	*	*	*

¹ The EPA approves the provisions in Table 2 of this paragraph (e) only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP.

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TABLE 5 – STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
EPA-Approved Manuals				
ODEQ Source Sampling Manual	State-wide	12/11/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Volume I (November 2018 edition) and Volume II (April 2015 edition) only for purposes of the emission limits and requirements approved into the Oregon SIP.
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[FR Doc. 2019-23522 Filed: 10/30/2019 8:45 am; Publication Date: 10/31/2019]