

Dated: July 2, 2002.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

[FR Doc. 02-18706 Filed 7-23-02; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA30

#### Financial Crimes Enforcement Network; Rescission of Exemption From Bank Secrecy Act Regulations for Sale of Variable Annuities

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Notice of rescission of exemption.

**SUMMARY:** FinCEN is announcing today that it is rescinding an exemption from the provisions of the Bank Secrecy Act regulations granted in 1972 to persons required to register as brokers or dealers in securities ("broker-dealers") solely to permit the sale of variable annuities contracts issued by life insurance companies. This action is being taken in order to ensure consistency with USA PATRIOT ACT provisions mandating extension of Bank Secrecy Act requirements to a broad range of financial institutions.

**DATES:** Effective Date: August 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Peter G. Djinis, Executive Assistant Director for Regulatory Policy, FinCEN, at (703) 905-3930; Judith R. Starr, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905-3590.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332 (the "BSA"), authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.<sup>1</sup>

<sup>1</sup> Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening

Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

##### II. FinCEN Issuance 2002-1

This document, FinCEN Issuance 2002-1, rescinds an exemption from the provisions of 31 CFR part 103 granted to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. The background and purpose of the rescission are explained below.

The definition of "financial institution" for BSA purposes, found at 31 CFR 103.11(n), includes "a broker or dealer in securities."<sup>2</sup> BSA regulations further define the term "broker or dealer in securities" to include a "broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934."<sup>3</sup> Because variable annuity contracts fall within the definition of "security" under the federal securities laws, life insurance companies wishing to sell variable annuity contracts must register as broker-dealers under the Securities Exchange Act of 1934, and thus fall under the definition of "broker or dealer in securities" found in 31 CFR part 103.

In response to a request from the American Life Convention—Life Insurance Association of America, Treasury in 1972 granted an exemption from the provisions of 31 CFR part 103 to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies.<sup>4</sup> However, given the Congressional mandate found in the USA PATRIOT ACT to extend to all entities defined as financial institutions under the BSA the requirement to establish an anti-money laundering program (*See* Section 352(a) of the USA PATRIOT ACT), and to extend suspicious activity reporting to broker-dealers (*See* Section 356 of the USA PATRIOT ACT), FinCEN believes that it is now appropriate to rescind this exemption pursuant to 31 CFR 103.86.

On December 31, 2001, FinCEN published a notice of proposed

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107-56.

<sup>2</sup> *See* 31 CFR 103.11(n)(2).

<sup>3</sup> *See* 31 CFR 103.11(f).

<sup>4</sup> *See* 37 FR 248986, 248988, November 23, 1972.

rulemaking (the "Notice"), 66 FR 67670, that would extend to broker-dealers the requirement to report suspicious transactions to the Department of the Treasury. In the Notice, FinCEN indicated that it anticipated that the exemption relating to variable annuity contracts issued by life insurance companies would be rescinded on the effective date of the final rule based on the Notice.<sup>5</sup> A final rule based on the Notice was published in the **Federal Register** on July 1, 2002.<sup>6</sup> FinCEN did not receive any adverse comments on the issue of rescinding the exemption. However, in response to a comment, FinCEN wishes to clarify that rescission of the exemption extends BSA coverage only to the activity of a life insurance company requiring the company to register with the SEC as a broker-dealer, and not to all activity of the life insurance company.

Thus, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies is subject to all applicable BSA requirements, including the requirement to file reports of suspicious activity, to the extent they offer and sell such contracts.

Dated: July 15, 2002.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 02-18612 Filed 7-23-02; 8:45 am]

BILLING CODE 4810-02-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[Docket #: OR-01-006a; FRL-7240-9]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: OR; Medford Carbon Monoxide Nonattainment Area

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon, and the revised Medford CO maintenance plan. Oregon concurrently requested redesignation of

<sup>5</sup> *See* 66 FR 67670, 67672 (December 31, 2001).

<sup>6</sup> *See* 67 FR 44048 (July 1, 2002).

Medford from nonattainment to attainment for CO and EPA is approving the redesignation request.

**DATES:** This direct final rule will be effective on September 23, 2002, without further notice, unless EPA receives adverse comment by August 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's requests and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204-1390.

**FOR FURTHER INFORMATION CONTACT:** Connie Robinson, Office of Air Quality (OAQ-107), EPA, Region 10, Seattle, Washington, (206) 553-1086.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

#### I. Background Information

- A. *What Is a State Implementation Plan?*
- B. *Why Was This SIP Revision and Redesignation Request Submitted?*
- C. *What Action Is EPA Taking?*

#### II. Basis for EPA's Action

- A. *What Criteria Did EPA Use To Review the Maintenance Plan and Redesignation Request?*
- B. *How Does the State Show That the Area Has Attained the CO NAAQS?*
- C. *Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?*
- D. *Are the Improvements in Air Quality Permanent and Enforceable?*
- E. *Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?*
- F. *Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?*
- G. *How Will This Action Affect the Oxygenated Fuels Program in Medford?*
- H. *How Will the State Continue To Verify Attainment?*
- I. *What Contingency Measures Does the State Provide?*
- J. *How Will the State Provide for Subsequent Maintenance Plan Revisions?*
- K. *How Does This Action Affect Transportation Conformity in Medford?*

L. *How Does This Action Affect Specific Rules?*

#### III. Final Action

#### IV. Administrative Requirements

#### I. Background Information

##### A. *What Is a State Implementation Plan?*

Section 110 of the Clean Air Act as amended in 1990 (the Act) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: CO, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations.

Oregon submitted their original section 110 SIP on January 25, 1972, and it was approved by EPA soon thereafter. Other SIP revisions have been submitted over the intervening years and likewise have been approved. The Medford CO SIP revisions and redesignation request submitted on May 31, 2001, are the subject of today's action.

##### B. *Why Was This SIP Revision and Redesignation Request Submitted?*

Oregon believes that the Medford, Oregon CO nonattainment area is eligible for redesignation to attainment because air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1991. The Medford nonattainment area has shown attainment of the CO NAAQS since 1993 and the maintenance plan demonstrates that Medford will be able to remain in attainment for the next 10 years.

##### C. *What Action Is EPA Taking?*

Today's rulemaking announces three actions being taken by EPA related to air quality in the State of Oregon. These actions are taken at the request of the Governor of Oregon in response to requirements of the Act and EPA regulations.

First, EPA approves the 1993 base/attainment year CO emissions inventory for Medford. The 1993 inventory establishes a baseline of emissions that EPA considers comprehensive and

accurate and provides the foundation for air quality planning in the Medford, Oregon CO nonattainment area.

Second, EPA approves the CO maintenance plan for the Medford nonattainment area into the Oregon SIP.

Third, EPA redesignates Medford from nonattainment to attainment for CO. This redesignation is based on validated monitoring data and projections made in the maintenance plan's demonstration. EPA believes the area will continue to meet the NAAQS for CO for at least ten years beyond this redesignation, as required by the Act.

#### II. Basis for EPA's Action

##### A. *What Criteria Did EPA Use To Review the Maintenance Plan and Redesignation Request?*

Section 107(d)(3)(E) of the Act states that EPA can redesignate an area to attainment if the following conditions are met:

1. The State must attain the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the Act and the area must meet all the relevant requirements under section 110 and part D of the Act.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

EPA has found that the Oregon redesignation request for the Medford, Oregon CO nonattainment area meets the above requirements. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of Medford's CO nonattainment area to attainment.

##### B. *How Does the State Show That the Area Has Attained the CO NAAQS?*

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year at any monitoring site in the nonattainment area for at least two consecutive years. The redesignation of Medford is based on air quality data that shows that the CO standard was not violated from 1992 through 1995, or since. These data were collected by the Oregon Department of Environmental Quality (ODEQ) in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control, and are entered in the EPA Aerometric Information and Retrieval System, or AIRS. Since the Medford, Oregon area has complete quality-assured monitoring data showing attainment

with no violations, the area has met the statutory criterion for attainment of the CO NAAQS. ODEQ has committed to continue monitoring in this area in accordance with 40 CFR part 58.

*C. Does the Area Have a Fully Approved SIP Under section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?*

Yes. Medford was classified as a nonattainment area with a design value less than 12.7 parts per million (ppm). Therefore, the 1990 requirements applicable to the Medford nonattainment area for inclusion in the Oregon SIP include a 1990 emission inventory with periodic updates, an oxygenated fuels program, basic motor vehicle inspection/maintenance (I/M) program, contingency measures, conformity procedures, and a permit program for new or modified major stationary sources.

For the purposes of evaluating the request for redesignation to attainment, EPA has previously approved all but one element of the Oregon SIP. Section 187(a) of the Act requires moderate CO areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources as described in section 172(c)(3). Specifically, the 1990 emissions inventory was reviewed but not acted upon to allow for additional correction and revision. We later determined that a 1993 inventory that incorporated these changes would satisfy the requirement for a base/attainment year inventory and would also serve as the attainment year emissions inventory submitted with the maintenance plan. Today's action concurrently approves this required element of the 110 SIP as part of the Oregon SIP with the redesignation to attainment.

*D. Are the Improvements in Air Quality Permanent and Enforceable?*

Yes. Emissions reductions achieved through the implementation of control measures are enforceable. These

measures are: (1) The Federal Motor Vehicle Control Program, establishing emission standards for new motor vehicles; (2) a basic I/M program, and (3) an oxygenated fuels program.

ODEQ has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn or unusual or extreme weather patterns. We believe the combination of certain existing EPA-approved SIP and Federal measures contribute to permanent and enforceable reductions in ambient CO levels that have allowed the area to attain the NAAQS.

*E. Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?*

Today's action by EPA approves the Medford CO maintenance plan. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The Medford CO maintenance plan meets all of these requirements.

*F. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?*

Yes. ODEQ submitted comprehensive inventories of CO emissions from point, area and mobile sources using 1993 as the attainment year. Since air monitoring recorded attainment of CO

in 1993, this is an acceptable year for the attainment year inventory. This data was then used in calculations to demonstrate that the CO standard will be maintained in future years. ODEQ calculated inventories for the required maintenance year (2012) and three years beyond (2015). Future emission estimates are based on forecast assumptions about growth of the regional economy and vehicle miles traveled.

Mobile sources are the greatest source of CO. Although vehicle use is expected to increase in the future, more stringent Federal automobile standards and removal of older, less efficient cars over time will still result in an overall decline in CO emissions. The projections in the maintenance plan demonstrate that future emissions are not expected to exceed attainment year levels.

Total CO emissions were projected from the 1993 attainment year out to 2015. These projected inventories were prepared according to EPA guidance. Because compliance with the 8-hour CO standard is linked to average daily emissions, emission estimates reflecting a typical winter season day (pounds of CO per day) were used for the maintenance demonstration. Oregon calculated these emissions without the implementation of the oxygenated fuels program. Oregon is requesting that the SIP requirement for an oxygenated fuels program be discontinued upon EPA's approval of the maintenance plan and redesignation. The projections show that CO emissions calculated without the implementation of the oxygenated fuels program are not expected to exceed 1993 attainment year levels. The following table summarizes the 1993 attainment year emissions, the 2015 maintenance year emissions, and 2015 emissions. The on-road mobile emissions are modeled for 1993 and 2015. Emissions for 2012 were calculated on the basis of a straight line interpolation between these two analysis years.

TABLE 1.—1993 CO ATTAINMENT YEAR ACTUAL EMISSIONS, 2012 CO MAINTENANCE YEAR PROJECTED EMISSIONS AND 2015 CO PROJECTED EMISSIONS [Pounds CO/Winter Day]

Year	Mobile	Area	Non-road	Point	Total
1993 Attainment Year Actuals .....	57,342	19,656	6,536	28,517	112,051
2012 Maintenance Year Projected .....	28,439	16,083	8,800	19,420	72,742
2015 Year Projected .....	22,244	16,165	9,186	20,153	67,748

Detailed inventory data for this action is contained in the docket maintained by EPA.

*G. How Will This Action Affect the Oxygenated Fuels Program in Medford?*

ODEQ's maintenance demonstration shows that the Medford Urban Growth Boundary (UGB) is expected to continue to meet the CO NAAQS through 2015 without the oxygenated fuels program, while maintaining a safety margin. Therefore, EPA approves the State's request to discontinue the oxygenated fuels program except as a contingency measure in the maintenance plan. The oxygenated fuels program will not need to be implemented following redesignation unless a future violation of the standard triggers its use as a contingency measure.

*H. How Will the State Continue To Verify Attainment?*

In accordance with 40 CFR part 50 and EPA's Redesignation Guidance, ODEQ has committed to analyze air quality data on an annual basis to verify continued attainment of the CO NAAQS. ODEQ will also conduct a comprehensive review of plan implementation and air quality status eight years after redesignation. The State will then submit a SIP revision that includes a full emissions inventory update and provides for the continued maintenance of the standard ten years beyond the initial ten-year period.

*I. What Contingency Measures Does the State Provide?*

If the monitored CO level at any site registers a second high 8-hour average of

8.1 ppm during a calendar year, the ODEQ will convene a planning group to review and recommend contingency strategies for implementation in order to prevent a violation. These strategies include but are not limited to improvements to parking and traffic circulation; aggressive signal retiming program; increased funding for transit; enhanced I/M program; and accelerated implementation of bicycle and pedestrian networks.

Section 175(d) of the Act requires retention of all control measures contained in the SIP prior to redesignation as contingency measures in the CO maintenance plan. The oxygenated fuels program was a control measure contained in the SIP prior to redesignation and is a primary contingency measure in the maintenance plan. This contingency measure will be reinstated in the event of a quality-assured violation of the NAAQS for CO at any permanent monitoring site in the nonattainment area. A violation will occur when any monitoring site records two eight-hour average CO concentrations that equal or exceed 9.5 ppm in a single calendar year. If triggered, this contingency measure would require all gasoline blended for sale in Medford to meet requirements identical to those of the current oxygenated gasoline program. Implementation will continue throughout the balance of the CO maintenance period, or until such time as a reassessment of the ambient CO monitoring data establishes that the contingency measure is no longer needed and EPA agrees to a revision.

*J. How Will the State Provide for Subsequent Maintenance Plan Revisions?*

In accordance with section 175A (b) of the Act, the state has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. That revised SIP must provide for maintenance of the standard for an additional ten years. It will include a full emissions inventory update and projected emissions demonstrating continued attainment for ten additional years.

*K. How Does This Action Affect Transportation Conformity in Medford?*

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

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. For transportation conformity and regional emissions analysis purposes, an emissions budget has been established for on-road motor vehicle emissions in the Medford UGB. The transportation emissions budget numbers for the plan are shown in Table 2.

TABLE 2.—MEDFORD UGB TRANSPORTATION EMISSIONS BUDGET  
[Pounds CO/Winter Day]

Year	2000	2015	2020 and after
Budget (1st 4 yrs I/M exempt) .....	63,860	26,963	32,640

EPA found this motor vehicle emissions budget adequate for conformity purposes. See 67 FR 17686, April 11, 2002.

*L. How Does This Action Affect Specific Rules?*

Upon the effective date of this action, Medford, Oregon will no longer be a nonattainment area and will become a maintenance area. Additionally, OAR 340-204-0090, Oxygenated Gasoline Control Areas, has been revised to discontinue the program in Medford upon the effective date of this action. EPA is approving this rule as a revision to the SIP and replacing the rule dated

10-25-00. Below are the specific rule revisions affected by this action which EPA is incorporating by reference into the SIP, with the state effective date in parentheses. OAR 340-204-0090, Oxygenated Gasoline Control Areas (3-27-01)

**III. Final Action**

EPA is approving the following revisions to the Oregon SIP: the 1993 CO base/attainment year emissions inventory for Medford, Oregon, and the Medford CO maintenance plan. EPA is also approving redesignation of Medford, Oregon from nonattainment to attainment for CO. EPA is approving the

Medford CO maintenance plan, and Oregon's request for redesignation to attainment because Oregon has demonstrated compliance with the requirements of section 107(d)(3)(E). We believe that the redesignation requirements are effectively satisfied based on information provided by ODEQ and contained in the Oregon SIP and Medford Oregon CO maintenance plan.

**IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. 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).)

#### *Oregon Notice Provision*

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(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 section 110 SIP revision.

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 ORS 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 ORS 468.126(2)(e) and agreed that, because 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.

#### *Oregon Audit Privilege*

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

##### *40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 25, 2002.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart MM—Oregon**

2. Section 52.1970 is amended by adding paragraph (c)(137) to read as follows:

**§ 52.1970 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(137) On May 31, 2001, the Oregon Department of Environmental Quality requested the redesignation of Medford to attainment for carbon monoxide. The State's maintenance plan, base/attainment year emissions inventory, and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340-204-0090, as effective March 27, 2001.

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.338, the table entitled "Oregon—Carbon Monoxide," the entry for Medford Area, Jackson County is revised to read as follows:

\* \* \* \* \*

**§ 81.338 Oregon.**

\* \* \* \* \*

**OREGON—CARBON MONOXIDE**

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Medford Area: Jackson County (part).	September 23, 2002	Attainment		

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. 02-18584 Filed 7-23-02; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 261, 266, 268 and 271**

[FRL-7248-3]

RIN 2050-AE69

**Zinc Fertilizers Made From Recycled Hazardous Secondary Materials**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today finalizing regulations under the Resource Conservation and Recovery Act (RCRA) that apply to recycling of hazardous secondary materials to make zinc fertilizer products. This final rule establishes a more consistent regulatory framework for this practice, and establishes conditions for excluding hazardous secondary materials that are used to make zinc fertilizers from the regulatory definition of solid waste. The rule also establishes new product specifications for contaminants in zinc fertilizers made from those secondary materials.

**DATES:** This final rule is effective July 24, 2002, except for the amendment to 40 CFR 266.20(b), which eliminates the

exemption from treatment standards for fertilizers made from recycled electric arc furnace dust. The effective date for that provision in today's final rule is January 24, 2003.

**ADDRESSES:** Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703-603-9230. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this rulemaking, contact Dave Fagan, U.S. EPA (5301W), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308-0603, or e-mail: [fagan.david@epamail.epa.gov](mailto:fagan.david@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

Entities potentially regulated by this action are expected to include

manufacturers of zinc fertilizers, and the generators of hazardous secondary materials who will supply zinc-bearing feedstocks to those manufacturers. Some intermediate handlers, such as brokers, who manage hazardous secondary materials may also be affected by this rule.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA-2000-0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket, 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201. You may copy up to 100 pages from any docket at no charge. Additional copies cost \$0.15 each.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the