

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List"

and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T17–017 to read as follows:

#### § 165.T17–017 Security Zone: Port of Anchorage, Knik Arm, Alaska.

(a) *Location.* The following area is a security zone: All navigable waters within 1000-yards of the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14' North, 149°52.78' West; thence west to a point located at 61°15.14' North, 149°53.84' West; thence south to a point located at 61°14.39' North, 149°53.64' West; thence east to a point located at 61°13.94' North, 149°53.55' West; thence along the shoreline back to the beginning point.

(b) *Effective period.* This section is effective from 12:01 p.m., September 23, 2003 to 12:01 p.m., March 23, 2004.

(c) *Regulations.* (1) For the purpose of this section, the general regulations contained in 33 CFR 165.33 apply to all but the following vessels in the areas described in paragraph (a):

(i) Vessels scheduled to moor and offload or load cargo at the Port of Anchorage that have provided the Coast Guard with an Advance Notice of Arrival.

(ii) Tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist vessels to the dock at the Port of Anchorage.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port representative or the designated on-scene patrol personnel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other

means, the operator of a vessel shall proceed as directed.

Dated: September 23, 2003.

**Thomas D. Harrison,**

*Commander, Coast Guard, Acting Captain of the Port, Western Alaska.*

[FR Doc. 03–26555 Filed 10–20–03; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[Docket # OR–02–002a; FRL–7568–7]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Klamath Falls PM–10 Nonattainment Area Redesignation to Attainment and Designation of Area for Air Quality Planning Purposes

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

**ACTION:** Direct final rule.

**SUMMARY:** On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Klamath Falls to EPA for approval and concurrently requested that EPA redesignate the Klamath Falls nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is approving the maintenance plan and redesignating the Klamath Falls PM–10 nonattainment area to attainment.

**DATES:** This direct final rule will be effective December 22, 2003, unless EPA receives adverse comments by November 20, 2003. If relevant 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:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Electronic comments should be sent either to [r10.aircom@epa.gov](mailto:r10.aircom@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public

inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:**

Steven K. Body, State and Tribal Programs Unit, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone number: (206) 553-0782, or e-mail address: [body.steve@epa.gov](mailto:body.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

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**I. What Is the Purpose of This Action?**

EPA is approving the Klamath Falls PM-10 Maintenance Plan and redesignating the Klamath Falls PM-10 nonattainment area to attainment.

Klamath Falls is a city in south central Oregon with a population of approximately 40,000. In the late 1980's Klamath Falls recorded some of the highest PM-10 concentrations in the country.

**II. Why Was Klamath Falls Designated Nonattainment?**

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Klamath Falls, Oregon, area was designated nonattainment for PM-10 by operation of law because the area had been designated a Group I planning area before November 15, 1990. Group I planning areas were identified on August 7, 1987. See 52 FR 29383. On October 31, 1990, EPA clarified the description of certain Group I planning areas, including the Klamath Falls area. See 55 FR 45799. These areas were called "initial PM-10 nonattainment areas." On March 15, 1991, EPA announced these areas and classified them as moderate PM-10 nonattainment areas. See 56 FR 11101.

**III. How Can a Nonattainment Area Be Redesignated to Attainment?**

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment*. The criteria for redesignation are:

- (1) The Administrator determines that the area has attained the relevant national ambient air quality standard;
- (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;
- (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;
- (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(5) the State containing the area has meets all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved. The following is a summary of EPA's analysis and conclusion regarding the maintenance plan of Klamath Falls and the State's redesignation request. Additional detail regarding EPA's review and analysis may be found in the technical support document which is located in the public docket for this action.

**IV. Did the State Follow Appropriate Administrative Procedures Before Submitting All the Relevant Material to EPA?**

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA.

The Oregon Department of Environmental Quality (ODEQ), which has regulatory authority for sources of air pollution in the Klamath Falls PM-10 nonattainment area, developed the PM-10 maintenance plan. On May 20, 2002, ODEQ notified the public of the public hearing on the plan in the *Herald and News*, Klamath Falls, Oregon. On June 25, 2002, ODEQ held the public hearing at the Klamath Falls City Hall, Council Chambers. On October 4, 2002, the State of Oregon adopted *A Plan for Maintaining the National Ambient Air Quality Standards for Particulate Matter (PM-10) in Klamath Falls Urban Growth Boundary Section 4.56 of the State Implementation Plan*. On November 4, 2002, the State submitted the redesignation request and maintenance plan to EPA.

The State meets the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

**V. Evaluation of the Redesignation Request and Maintenance Plan**

**A. The Area Must Have Attained the PM-10 NAAQS**

Section 107(d)(3)(E)(i) of the CAA requires that the Administrator determine that the area has attained the applicable NAAQS. The primary 24-hour NAAQS for Particulate Matter with an aerodynamic diameter equal to or less than 10 micrometers (PM-10) is 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) for

a 24-hour period (midnight to midnight), not to be exceeded more than once per year averaged over three calendar years. The annual NAAQS for PM-10 is 50  $\mu\text{g}/\text{m}^3$  annual arithmetic average, averaged over three calendar years. PM-10 in the ambient air is measured by a reference method based on 40 CFR part 50, appendix J. EPA considers an area as attaining the PM-10 NAAQS when all of the PM-10 monitors in the area have an exceedance rate of 1.0 or less averaged over three calendar years. (See 40 CFR 50.6 and 40 CFR part 50, appendix J.) In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Oregon's redesignation request for the Klamath Falls PM-10 area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1992 through 2002 show there have been no exceedances of the PM-10 standard since 1992. These data were collected and analyzed as required (see 40 CFR 50.6 and 40 CFR part 50, appendix J) and have been stored in EPA's Air Quality System (AQS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS. The Klamath Falls area has not violated the PM-10 standard since 1992 and continues to demonstrate attainment through calendar year 2002.

#### *B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D*

Section 107(d)(3)(E)(v) of the CAA requires that an area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the State must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. Below is a summary of how Oregon meets these requirements.

#### *C. Clean Air Act (CAA) Section 110 Requirements*

On January 25, 1972, Oregon submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. See 37 FR 10888. For purposes of redesignation, the Oregon SIP, including the Klamath Falls PM-10 SIP, were reviewed to ensure that the SIP satisfies the CAA requirements of section 110(a)(2). See 40 CFR 52.1970 for a complete listing of subsequent Oregon SIP submittals and EPA approvals.

#### *D. Part D Requirements*

Part D provides general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM-10 nonattainment areas must meet the applicable general provisions of subpart 1 (section 172) as well as the specific PM-10 provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas."

#### *E. Section 172(c)(3)—Emissions Inventory*

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Klamath Falls PM-10 nonattainment area.

Oregon included in the proposed Klamath Falls maintenance plan an emission inventory for calendar year 1996. This year corresponds to the year used in calculating the design value (discussed below) which is at a level well below the standard. This inventory thus represents emissions that are at a level to protect the standard. The inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

#### *F. Section 172(c)(5)—New Source Review (NSR)*

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. See section 189(a) of the Act. The General Preamble calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

In Klamath Falls, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. The Oregon Department of Environmental Quality rules for new source review that meet both attainment and nonattainment area requirements (provisions of OAR Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), that were in effect on October 8, 2002, were approved on January 22, 2003, (68 FR 2953) as

meeting the requirements of title I, parts C and D of the Clean Air Act.

Portions of Divisions 222, 224, and 225 were revised as part of the Grants Pass PM-10 Maintenance Plan and the Klamath Falls Maintenance Plan development effort. These rule revisions were approved by EPA on January 22, 2003 (68 FR 2953).

Section 0040(3)(b) of Division 204, effective October 8, 2002, is approved in this action. This section is revised to add Klamath Falls to the PM-10 Maintenance Area list.

#### *G. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements*

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area.

The State of Oregon has operated a PM-10 monitor in the Klamath Falls area since 1987 at the Peterson School Site. In the proposed Klamath Falls maintenance plan, the State of Oregon commits to continued operation of the PM-10 monitoring station.

#### *H. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA*

States containing initial moderate PM-10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area plan that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM-10 NAAQS by December 31, 1994. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Oregon's CAA part D initial PM-10 plan for the Klamath Falls PM-10 nonattainment area was submitted on November 15, 1991. The State submitted additional information and provisions on September 20, 1995. EPA approved the Klamath Falls PM-10 attainment plan on April 14, 1997. See 62 FR 18047. Thus, the area has a fully approved nonattainment area SIP.

#### *I. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions*

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable

implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The PM-10 emission reductions for the Klamath Falls area were achieved through a number of permanent and enforceable control measures including a mandatory woodstove certification program for all new stove sales, a mandatory woodstove and open burning ordinance, a ban on the sale and installation of uncertified woodstoves, and major source NSR. EPA approved these control measures as part of the part D SIP submittal on April 14, 1997. These control measures will continue into the maintenance period for the Klamath Falls area.

The State has demonstrated that the air quality improvements in the Klamath Falls area are the result of permanent enforceable emission reductions and are not the result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows the area will meet the NAAQS even under the worst case meteorological conditions.

#### *J. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A*

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA. As described below, Oregon has complied with the core requirements necessary for an approved maintenance plan. Accordingly, today's action approves the maintenance plan for Klamath Falls, Oregon.

#### *K. Emissions Inventory—Attainment Year*

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the PM-10 NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The Klamath Falls maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1996. This year is consistent with the design value which was calculated for 1996.

#### *L. Demonstration of Maintenance*

EPA policy contained in the September 4, 1992, Calcagni memo,

requires that the maintenance plan contain the same level of air quality modeling to demonstrate maintenance that was used in the original attainment plan to demonstrate attainment. The Klamath Falls attainment plan approved by EPA on April 14, 1997, contained simple proportional modeling. This approach was acceptable because Klamath Falls is a simple air shed and residential wood combustion is a primary source of emissions contributing to the measured violations. EPA agreed with Oregon that simple proportional modeling of emissions from 1996 to the maintenance year of 2015 and the use of the 1996 design value would be an adequate approach for the maintenance demonstration. Oregon projected emissions for the Klamath Falls area to 2015 using appropriate growth factors for population and industrial growth. The increase in emissions from 1996 to 2015 was used to predict both worst case 24-hour PM-10 and annual PM-10 concentrations.

The 24-hour 1996 design value is 95.2  $\mu\text{g}/\text{m}^3$ , based on measured air quality. The 1996 annual design value is 21.0  $\mu\text{g}/\text{m}^3$ . Using the 1996 emission inventory, growth projections to 2015, and an additional 10% increment above the projected growth in motor vehicle emissions in 2015, the projected PM-10 levels will be 112.4  $\mu\text{g}/\text{m}^3$ , worst case 24-hour concentration, and 25.3  $\mu\text{g}/\text{m}^3$ , annual average concentration. These PM-10 concentrations are below the level of the 24-hour and annual standards and therefore maintenance is demonstrated.

#### *M. Monitoring Network and Verification of Continued Attainment*

Continued ambient monitoring of an area is required over the maintenance period. Section 4.56.4.5 of the Klamath Falls maintenance plan provides for adequate ambient monitoring to be continued in the area for the maintenance period.

#### *N. Contingency Plan*

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct any violation of the NAAQS that occurs after redesignation. At a minimum, the contingency provisions must include a commitment that the State implement all measures contained in the nonattainment SIP prior to redesignation.

The Klamath Falls maintenance plan continues implementation of the control measures contained in the nonattainment area SIP, with the exception of the nonattainment area

major new source review. Major new source review will continue through the PSD program. Thus, the State has met the minimum requirement.

In addition to the minimum requirements, the Klamath Falls maintenance plan contains a contingency plan that consists of two phases. Phase I is triggered if PM-10 concentrations equal or exceed 90% of the level of either the 24-hour or annual standards. Phase I would require a review of various residential and outdoor burning requirements and alternative burning practices. Phase 2 of the contingency plan would require the implementation of strategies identified in Phase I as well as nonattainment permitting requirements for all new or modified major sources.

#### *O. Transportation Conformity*

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget (MVEB) contained in the applicable air quality plans for the Klamath Falls area. Unless EPA receives adverse comments on the MVEB for Klamath Falls, the motor vehicle emissions budget is deemed adequate to maintain the PM-10 standards through the maintenance year of 2015. The Oregon Department of Transportation, and the U.S. Department of Transportation are required to use the MVEB in this maintenance plan for future transportation conformity determinations.

The MVEBs to protect for both the 24-hour and annual National Ambient Air Quality Standards for PM-10 are proposed for approval for Klamath Falls as follows:

#### **KLAMATH FALLS PM<sub>10</sub> MOTOR VEHICLE EMISSIONS BUDGETS**

[pounds per winter day]

Year	2000	2005	2010	2015
MVEB .....	2949	3208	3466	3725

#### **KLAMATH FALLS PM<sub>10</sub> MOTOR VEHICLE EMISSIONS BUDGETS**

[tons per year]

Year	2000	2005	2010	2015
MVEB .....	548	596	644	692

Note that MVEBs for intervening years must be interpolated. In the case of Klamath Falls both the 24-hour and annual budgets must be satisfied in order to find that transportation plans conform. The TSD summarizes how the MVEBs meets the adequacy criteria

contained in the transportation conformity rule (40 CFR 93.118(e)(4)).

## VI. Final Action

EPA is approving the Klamath Falls PM-10 maintenance plan and redesignating the Klamath Falls, Oregon PM-10 nonattainment area to attainment.

## VII. General Information

### A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office, under Docket number OR-02-002. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at the Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204-1390.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the

copyrighted material, will be available at the Regional Office for public inspection.

### B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking OR-02-002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *E-mail.* You may send comments by electronic mail (e-mail) to [r10.aircom@epa.gov](mailto:r10.aircom@epa.gov), please including the text "Public comment on proposed rulemaking OR-02-002" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* You may use Regulations.gov as an alternative method to submit electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the "go" button.

The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

c. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Steven K. Body, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Please include the text "Public comment on proposed rulemaking OR-02-002" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Steven K. Body, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

### C. How Should I Submit CBI to the EPA?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### VIII. Statutory and Executive Order Reviews

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 (Pub. L. 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 6, 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 December 22, 2003. 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

#### 40 CFR Part 52

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

#### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 24, 2003.

**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)(140) to read as follows:

#### § 52.1970 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(140) On November 4, 2002, the Oregon Department of Environmental Quality requested the redesignation of Klamath Falls to attainment for PM-10. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rule 340-204-0040(3)(b) as effective October 8, 2002.

■ 3. Section 52.1973 is added to subpart MM to read as follows:

#### § 52.1973 Approval of plans.

(a) Carbon Monoxide. [Reserved]

(b) Lead. [Reserved]

(c) Nitrogen Dioxide. [Reserved]

(d) Ozone. [Reserved]

(e) Particulate Matter.

(1) EPA approves as a revision to the Oregon State Implementation Plan, the Klamath Falls PM-10 maintenance plan submitted to EPA on November 4, 2002.

(2) [Reserved]

(f) Sulfur Dioxide. [Reserved]

### 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 PM-10," the entry for Klamath Falls is revised to read as follows:

#### § 81.338 Oregon.

\* \* \* \* \*

## OREGON—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Klamath Falls (the Urban Growth Boundary Area) .....	12/22/03	Attainment		
* * * * *				

\* \* \* \* \*

[FR Doc. 03-26540 Filed 10-20-03; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-7817]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return,

communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition

against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive