

Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely ensures that State law meets 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 CAA; and
- Does not provide 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 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 March 2, 2009. 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: December 16, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R10-OAR-2007-0915; FRL-8747-7]

Approval and Promulgation of State Implementation Plans: Oregon; Salem Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of

Oregon. On August 9, 2007 the State of Oregon submitted a request to EPA that the Salem carbon monoxide (CO) nonattainment area be redesignated to attainment for the CO National Ambient Air Quality Standard (NAAQS) and concurrently submitted a maintenance plan that provides for continued attainment of the CO NAAQS. The Salem CO nonattainment area has not violated the 8-hour CO NAAQS since 1985.

DATES: This rule is effective on March 2, 2009, without further notice, unless EPA receives adverse comment by January 29, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2007-0915, by any of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- *E-mail:* vaupel.claudia@epa.gov.

- *Mail:* Claudia Vergnani Vaupel,

EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. *Attention:* Claudia Vergnani Vaupel, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2007-0915. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at *telephone number:* (206) 553-6121, *e-mail address:* vaupel.claudia@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we”, “us” or “our” are used, we mean EPA. Information is organized as follows:

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I. What Is the Purpose of This Action?

EPA is taking direct final action to approve the State of Oregon’s August 9, 2007 request to redesignate the Salem CO nonattainment area to attainment for the CO NAAQS and to approve the Salem area CO maintenance plan. The Salem CO nonattainment area is eligible for redesignation to attainment for the 8-hour CO NAAQS because the area has not violated the CO standard since 1985. The CO maintenance plan meets the requirements of the Clean Air Act (the Act) and demonstrates that the Salem area will be able to remain in attainment for CO for the next 10 years.

II. What Is the Background for This Action?

The Salem CO nonattainment area is located in the central Willamette Valley of north western Oregon. On March 3, 1978, a 32 square mile area within the city limits of Salem was designated by EPA as nonattainment for the CO NAAQS (43 FR 9028). EPA approved an expansion to the original nonattainment area on June 24, 1980 (45 FR 42275). Although Oregon refers to the expanded nonattainment area as the Salem-Keizer Area Transportation Study or Salem-Keizer area, for purposes of this action, we are referring to the expanded nonattainment area as the Salem CO nonattainment area.

On June 29, 1979, the State of Oregon submitted to EPA a control strategy for the Salem CO nonattainment area designed to bring about attainment of the CO NAAQS. In EPA’s approval of the SIP revision, it was noted that over 99 percent of CO emissions in the Salem CO nonattainment area originated from mobile sources and the control strategy relied only on the Federal Motor Vehicle Emission Control Program to demonstrate attainment (45 FR 42275, June 24, 1980). Based on air quality monitoring data, the Salem CO nonattainment area achieved the CO NAAQS in 1987.

Under section 107(d)(1)(C), any area that was designated nonattainment before the date of enactment of the Clean Air Act Amendments of 1990 was to retain the designation upon enactment by operation of law. CO nonattainment areas that had not violated the CO standard in either year for the two-year period 1988–1989 were to be designated nonattainment and identified as “not classified” nonattainment areas. Accordingly, on November 6, 1991, the Salem CO nonattainment area was designated nonattainment for the CO NAAQS by EPA and identified as “not-classified” (56 FR 56818).

As vehicle emission standards have become more stringent, CO concentrations in the Salem area have continued to decline. In the last 10 years, the highest design value (second highest 8-hour average CO concentration) measured in Salem in any calendar year by the approved monitoring network was 5.9 ppm, which is less than the 8-hour CO standard of 9.0 ppm. In order for the Salem CO nonattainment area to be redesignated to attainment, the State must submit to EPA for approval a redesignation request and a maintenance plan that ensures continued attainment of the CO NAAQS. A SIP revision containing these elements was submitted to EPA on August 9, 2007.

III. Redesignation and Maintenance Plan Requirements

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing that it has attained the NAAQS and when certain planning requirements are met. EPA has reviewed the State’s redesignation request and maintenance plan. EPA believes the submittal meets the requirements of section 107(d)(3)(E). The requirements for redesignation and maintenance plan approval are presented below and our evaluation of how the current submittal meets these requirements is presented in section IV.

A. Requirements for Redesignation of Nonattainment Areas

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 area has attained the applicable NAAQS.
- 2. The area must have a fully approved implementation plan under section 110(k).
- 3. The air quality improvement is due to permanent and enforceable reductions in emissions.

4. The area must meet all relevant requirements under section 110 and Part D of the Act.

5. The area must have a fully approved maintenance plan pursuant to section 175A.

B. Maintenance Plan Requirements

Section 175A of the Act defines the general framework of a maintenance plan, which must provide for maintenance (*i.e.*, continued attainment) of the relevant NAAQS in the area for at least 10 years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

C. Conformity Requirements

Section 176(c) of the Act prohibits Federal entities from taking actions in nonattainment or maintenance areas which do not conform to the SIP for the attainment and maintenance of the NAAQS. EPA promulgated two sets of regulations to implement section 176(c), the transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93). Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

IV. Evaluation of the Redesignation Request and Maintenance Plan

We have reviewed the redesignation request and maintenance plan for the Salem CO nonattainment area and conclude that the submittal meets the requirements of section 107(d)(3)(E), noted above. The following is our evaluation of how each of the requirements is met.

A. Evaluation of Redesignation Requirements

1. Has the Salem Nonattainment Area Attained the Applicable NAAQS?

The 8-hour CO NAAQS is 9 parts per million (10 milligrams per cubic meter)

for an 8-hour average, not to be exceeded more than once per year. An area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive calendar years. States must demonstrate that an area has attained the CO NAAQS through complete quality-assured data. The redesignation request for the Salem CO nonattainment area is based on air quality data that shows the CO standard was not violated for the 20-year period from 1986 through 2006. These data were collected by the Oregon Department of Environmental Quality (ODEQ) in accordance with 40 CFR 50.8 and entered in EPA's Air Quality System. Since 2006, ODEQ has continued to verify attainment in the Salem area by conducting a triennial review of Marion and Polk County CO emissions from the statewide emissions inventory and tracking CO measurements in other areas of the state. Because the Salem area has complete quality-assured monitoring data and emissions inventory data showing attainment with no violations after 1986, EPA concludes that the area has attained the NAAQS for CO.

2. Does the Salem Nonattainment Area Have a Fully Approved SIP Under Section 110(k) of the Act?

Section 110(k) contains the requirements for EPA action on plan submissions. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act. Based on the approval into the SIP of provisions under the pre-1990 Act (37 FR 10888, May 31, 1972 and 45 FR 42275, June 24, 1980) and documentation that has been provided in this SIP submission, we conclude that Oregon has a fully approved SIP for the Salem CO nonattainment area under section 110(k).

3. Has the State Demonstrated the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions resulting from implementation of the applicable implementation plan, applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The State attributes the reductions in CO emissions in the Salem area primarily to the Federal Motor Vehicle Emission Control Program and fleet turnover, the control measures relied on in the CO attainment plan. Although emissions inventories reveal that the highest wintertime emissions in the

Salem area are currently from woodstoves and fireplaces, the State explained in its submittal that these sources are widely distributed throughout the area and contribute to low-level CO concentrations. Due to the tendency of mobile on-road sources to assemble spatially, mobile on-road sources continue to be the most likely to produce the highest CO concentrations in the Salem area.

We have evaluated the control measures used and the attainment emission inventory and conclude that emissions reductions in the attainment year are not the result of short term economic slow downs or unusual meteorological conditions. In its submittal, the State has demonstrated that emissions reductions from the Federal Motor Vehicle Emission Standards and fleet turnover will continue into the maintenance period. We conclude that the improvement in air quality in the Salem CO nonattainment area has resulted from emission reductions that are permanent and enforceable.

4. Has the State Met All Applicable Requirements Under Section 110 and Part D of the Act?

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

a. Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. On May 31, 1972, EPA approved the original Oregon SIP as meeting the requirements of section 110(a)(2) of the Act (37 FR 10888). For the purpose of this redesignation, EPA review of the Oregon SIP shows that the State has satisfied all requirements under section 110(a)(2) of the Act. Further, in 40 CFR 52.1972, EPA has approved Oregon's plan for the attainment and maintenance of the national standards under section 110.

b. Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. On June 24, 1980, EPA approved the State of Oregon's Part D plan for the Salem CO nonattainment area (45 FR 42275). Following enactment of the Clean Air Act Amendments of 1990, the Salem CO

nonattainment area was designated nonattainment for the CO NAAQS by operation of law. Because the area had not violated the CO standard in either year for the two-year period 1988–1989, it was identified as a “not classified” nonattainment area (56 FR 56818, November 6, 1991). Before the Salem “not classified” CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of Part D. Under Part D, an area’s classification indicates the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble provides EPA’s interpretation of the requirements for “not classified” CO areas (57 FR 13535). The General Preamble reads: “Although it seems clear that the CO-specific requirements of subpart 3 of Part D do not apply to CO “not classified” areas, the 1990 Clean Air Act Amendments are silent as to how the requirements of subpart 1 of Part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply.”

The General Preamble provides that for “not classified” CO nonattainment areas, the applicable requirements of section 172 are: Section 172(c)(3)—Emissions Inventory; section 172(c)(5) New Source Review (NSR); and section 172(c)(7)—Compliance with section 110(a)(2) Air Quality Monitoring Requirements.

[1] Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Salem CO nonattainment area. Oregon’s submittal provided an emission inventory for the Salem CO maintenance plan for the 1999 attainment year. The State explained that it considers the use of the 1999 emissions inventory to be as good as, or more conservative than, the use of a more recent year because 1999 represents the year with the highest design value in the last 10-year period. Additionally, the State provided a fleet-average emission factor analysis showing that CO emission rates from on-road motor vehicles will continue to decline well below the 1999 rates. The State explained that the tendency of

mobile on-road sources to assemble spatially makes this source the most likely to produce the highest CO concentrations in the Salem area. We have reviewed the emission inventory and determined that it meets the emission inventory obligation and that it represents emissions in the area that provide for attainment with a 1998–1999 design value of 5.9 ppm CO.

[2] Section 172(c)(5)—New Source Review

The Act requires all nonattainment areas to meet several requirements regarding NSR. The State must have an approved NSR program that meets the requirements of section 172(c)(5). EPA evaluated and initially approved the ODEQ NSR program on August 13, 1982 (47 FR 35191), as being equivalent or more stringent than EPA’s regulations on a program basis. EPA most recently approved the ODEQ NSR program, on January 22, 2003 (68 FR 2891) and revisions on June 19, 2006 (71 FR 35163).

In the Salem CO nonattainment area, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program upon the effective date of this redesignation. We fully approved Oregon’s PSD program on January 22, 2003 (68 FR 2891) and revisions on June 19, 2006 (71 FR 35163). See Oregon Administrative Rules Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225 and 268.

[3] Section 172(c)(7)—Compliance With Section 110(a)(2): Air Quality Monitoring Requirements

According to the General Preamble of April 16, 1992, “not classified” CO nonattainment areas should meet the “applicable” air quality monitoring requirements of section 110(a)(2) of the Act. EPA previously approved Oregon’s SIP for monitoring on December 5, 1980 (45 FR 80559). Most recently, EPA approved Oregon’s monitoring network for all pollutants, including CO, on November 16, 2007.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

For an area to be redesignated to attainment, the area must have a fully approved maintenance plan meeting the requirements of section 175A of the Act. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after redesignation to attainment. In this action, we are approving the maintenance plan submitted by the State on August 9, 2007. We evaluate the plan in the

following section and conclude that the requirements for an approvable maintenance plan under the Act have been met.

B. Evaluation of Maintenance Plan Requirements

EPA must fully approve a maintenance plan that meets the requirements of section 175A of the Act. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance, i.e., continued attainment, of the relevant NAAQS in the area for at least 10 years after redesignation. In addition, areas that can demonstrate CO design values at or below 7.65 ppm (85 percent of exceedance levels of the CO NAAQS) for 8 consecutive quarters may use a limited maintenance plan option.

The 8-hour CO design value for the Salem area is 5.9 ppm and the State of Oregon has opted to develop a limited maintenance plan to keep the area in attainment for the next 10 years. The following is our evaluation of how the maintenance requirements are met.

1. Does the State Have an Approved Attainment Emissions Inventory?

The maintenance plan must contain an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA’s most recent guidance on emissions inventories for nonattainment areas and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory should be based on actual “typical winter day” emissions of CO. Areas meeting the criteria for a limited maintenance plan are not required to provide a future-year emission inventory.

The Salem CO maintenance plan contains an attainment emissions inventory for the year 1999. The State explained that it considers the 1999 attainment year to be as good as, or more conservative than, the use of a more recent year because it represents the year with the highest design value in the last 10-year period. In addition, the State provided an emission factor analysis of on-road motor vehicles, the source considered to be the most likely to produce the highest CO concentrations, showing that CO emission rates from on-road motor vehicles will continue to decline well below the 1999 rates.

We have reviewed the 1999 emission inventory and determined that it is consistent with EPA’s most recent guidance on maintenance plan emission

inventories. The 1999 attainment year coincides with a period in which a design value of 5.9 ppm CO was calculated. Therefore, this inventory represents emissions during an attainment year and meets the maintenance plan emission inventory requirement. The table below shows the pounds of CO emitted per winter day in 1999 by source category.

SUMMARY OF 1999 SEASONAL CO EMISSIONS IN THE SALEM AREA

| Main source category | Seasonal day CO emissions (lb/day) |
|--------------------------------|------------------------------------|
| Stationary Point | 57,168 |
| Stationary Area | 239,142 |
| Mobile Non-Road | 19,820 |
| Mobile On-Road | 197,400 |
| Total All Sources | 513,530 |

2. Has the State Demonstrated the CO Standard Will Be Maintained?

The Salem CO maintenance plan was developed using the limited maintenance plan option, which is available to "not classified" CO areas that can demonstrate design values at or below 7.65 ppm (85 percent of exceedance levels of the CO NAAQS) for 8 consecutive quarters. For areas using the limited maintenance plan option, the maintenance plan demonstration requirement is considered to be satisfied because EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. There is no requirement to project emissions over the maintenance period.

The CO design value for 1998–1999 for the Salem area is 5.9 ppm, which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Salem area has adequately demonstrated that it will maintain the CO NAAQS 10 years into the future.

3. How Will the State Continue To Verify Attainment?

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 50 CFR part 58. The State of Oregon has an approved monitoring network that includes the Salem area. The monitoring network

was most recently approved by EPA on November 16, 2007. In the 2006 Ambient Air Monitoring Network Assessment, EPA approved ODEQ's request to discontinue CO monitoring at Salem because recent monitoring data indicated that 8-hour averages were about one-half of the CO standard. ODEQ will track CO measurements in other areas of the state where monitors remain. If ambient CO levels rise significantly, ODEQ will resume monitoring in the Salem area. In addition, ODEQ will continue to verify attainment in the Salem area by conducting a triennial review of Marion and Polk County CO emissions from the statewide emissions inventory.

4. What Contingency Plan Does the State Provide?

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. The Salem CO maintenance plan requires ODEQ to resume ambient CO monitoring directly in the Salem area if a significant increase in CO emissions is shown as described above. If a violation of the standard occurs, the plan contains a contingency measure that requires new and expanding industries to install lowest achievable emission rate controls and for ODEQ to investigate and take necessary corrective action to bring the area into compliance. EPA believes that the contingency measures in the Salem CO maintenance plan meet the contingency provision requirements of 175A(d).

C. Transportation and General Conformity

1. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required.

While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to other transportation

conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

- Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;
- Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;
- The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;
- Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;
- The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;
- Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and
- Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

2. What Is the Adequacy Status of This Limited Maintenance Plan?

On October 7, 2008, EPA posted a proposal to find the Salem limited maintenance plan Motor Vehicle Emissions Budget adequate for transportation conformity purposes on EPA's conformity Web site: <http://www.epa.gov/oms/traq>. As stated above, limited maintenance plan budgets are unconstrained and consequently, the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. Interested parties may comment on the adequacy and approval of the limited maintenance plans by submitting their comments on the proposed rule published concurrently with this direct final rule. The comment period for the adequacy posting for the Salem limited maintenance plan ended on November 6, 2008. EPA did not receive any comments on this posting.

3. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the

requirements for general conformity are not changed. Subpart B General Conformity Rules for Federal actions still apply.

V. Final Action

EPA is taking direct final action to approve the Salem CO maintenance plan and redesignate the Salem CO nonattainment area to attainment. This action is based on our evaluation of ODEQ's August 9, 2007 submittal. We conclude that the Clean Air Act requirements are effectively satisfied and we believe the area will continue to meet the NAAQS for CO for at least ten years beyond this redesignation, as required by the Act.

EPA is incorporating by reference the revisions submitted by the State to the Oregon Administrative Rules, Chapter 340, Division 204, Sections: 0030 (1) and (2), and 0040 [except (2)(c)], as effective June 28, 2007. EPA is taking no action on Chapter 340, Division 200, Section 0040, State of Oregon Clean Air Act Implementation Plan, because this section describes the State's procedures for adopting its SIP and incorporates by reference all of the revisions adopted by the Environmental Quality Council for approval into the Oregon SIP (as a matter of state law). This is not what is actually approved by EPA as the Federally-enforceable SIP for Oregon, so we are therefore taking no action on it. Previously, 340-200-0040 had been approved by EPA into the SIP in error and we are revising § 52.1970(c)(145)(i)(A) to correct this error.

VI. Oregon Notice Provision

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

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - 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 (Pub. L. 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 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).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 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 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 March 2, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, 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: November 21, 2008.

Elin D. Miller,

Regional Administrator, EPA 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 revising paragraph (c)(145)(i)(A) and adding paragraph (c)(149) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *
(145) * * *

(i) Incorporation by reference.

(A) Oregon Administrative Rules, Chapter 340: 240–0090 and 240–0440, as effective December 15, 2004.

* * * * *

(149) On August 9, 2007, the Oregon Department of Environmental Quality submitted a CO maintenance plan and requested redesignation of the Salem CO

nonattainment area to attainment for CO. The State’s maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) The following revised sections of Oregon Administrative Rule 340: 204–0030 Designation of Nonattainment Areas (1) and (2) and 204–0040 Designation of Maintenance Areas (except (2)(c)), as effective June 28, 2007.

■ 3. Section 52.1973 is amended by adding paragraph (a)(2) to read as follows:

§ 52.1973 Approval of plans.

(a) * * *

(2) EPA approves as a revision to the Oregon State Implementation Plan, the

Salem carbon monoxide maintenance plan submitted to EPA on August 9, 2007.

* * * * *

PART 81—[AMENDED]

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

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

■ 5. In § 81.338, the table entitled “Oregon-Carbon Monoxide” is amended by revising the entry for “Salem Area” to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—CARBON MONOXIDE

| Designated area | Designation | | Classification | |
|---|-------------------|-------------|-------------------|------|
| | Date ¹ | Type | Date ¹ | Type |
| | | Attainment. | | |
| Salem Area: | | | | |
| Salem Area Transportation Study Marion County (part). | 3/2/08 | | | |
| Polk County (part) | 3/2/08 | | | |

¹ This date is November 15, 1990, unless otherwise noted.

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[FR Doc. E8–30825 Filed 12–29–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R07–RCRA–2008–0830; FRL–8758–6]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate Final Rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the EPA to authorize States to operate their hazardous waste management programs in lieu of the Federal program. Nebraska has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is

authorizing the State’s changes through this immediate final rule.

DATES: This final authorization will become effective on March 2, 2009, unless EPA receives adverse written comment by January 29, 2009. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2008–0830, by one of the following methods:

1. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail:* haugen.lisa@epa.gov.

3. *Mail or Hand Delivery:* Lisa Haugen, Environmental Protection Agency, RCRA Enforcement and State Programs Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–RCRA–2008–0830. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of