is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 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 31, 2001. 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 in 40 CFR Part 52

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

Dated: October 16, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, part 52 of the Code of Federal Regulations is 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 G—Colorado

2. Section 52.332 is amended by revising the section heading and by adding paragraph (k) to read as follows:

§ 52.332 Control strategy: Particulate matter.

* * * * *

(k) *Determination*—EPA has determined that the Steamboat Springs PM_{10} ''moderate'' nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

Subpart BB—Montana

3. Section 52.1374 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(b) *Determination*—EPA has determined that the Whitefish PM_{10} ''moderate'' nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 1999. This determination is based on air quality monitoring data from 1997, 1998, and 1999. EPA has determined that the Thompson Falls PM_{10} ''moderate'' nonattainment area attained the PM_{10} national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

[FR Doc. 01–27277 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket #s: OR 68–7283a, OR 37–2–6301a, and OR 37–1–6301a; FRL–7035–6]

Approval and Promulgation of Air QualityImplementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA or ''we'').

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving most but not all of the State Implementation Plan (SIP) revisions submitted by the State of Oregon. This rulemaking evaluates the provisions of the Oregon Visibility SIP submitted August 26, 1993, smoke management plan provisions submitted on August 26, 1993, amendments to the smoke management plan for the Blue Mountains submitted September 27, 1995, and revisions to the Oregon field burning program submitted July 3, 1997. We are acting on these submissions together because they address, or are affected by, the control of particulate matter from area sources, specifically smoke from field burning and smoke from forestry burning. These rules are also linked through the Oregon Visibility SIP, which seeks to control visibility degradation through field burning programs and smoke management programs.

EPA is taking no action on the provision in the visibility SIP changing the review period from three to five years. Instead, the original three year review cycle will remain in the federally approved SIP until the first Regional Haze SIP is submitted and approved.

DATES: This direct final rule will be effective December 31, 2001, unless EPA receives adverse comment by December 3, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Steven K. Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You can see copies of the relevant documents used in this rulemaking during normal business hours at the following location: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality, at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

I. Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the Federal Clean Air Act (CAA or Act) requires states to protect visibility in mandatory Class I Federal areas where visibility is an important value. Mandatory Class I Federal areas are generally large national parks or wilderness areas where visibility is considered an important value. In Oregon, there are 12

mandatory Class I Federal areas, which include the Mount Hood Wilderness, the Mount Jefferson Wilderness, Three Sisters Wilderness, and Crater Lake National Park. A full listing of these mandatory Class I Federal areas can be found at 40 CFR 81.425, as well as at OAR 340–30–120. The Federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

What are the main visibility protections provided for by the Federal rules? The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas (section 169(A)). Employing a close coordination process among the state and the Federal land managers (FLM), the Federal rules require monitoring of visibility in mandatory Class I Federal areas, as well as the development of a long-term strategy for making reasonable progress towards this national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new major stationary source or major modification that may affect mandatory Class I Federal areas. Additionally, in the event that a Federal land manager certifies impairment of visibility in a mandatory Class I Federal area that could be caused, or contributed to, by a major stationary facility, Best Available Retrofit Technology (BART) may be imposed on the facility.

The Federal visibility rules were modified in 1999 to include provisions for addressing regional haze. Regional haze is visibility impairment which results from emissions from many point and non-point sources. All of the states are currently in the process of developing revisions to their SIP to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P. Please see the Technical Support Document associated with this rule for additional discussion of the visibility requirements of the Federal rule.

B. How Is Visibility Being Protected in Oregon?

On November 22, 1988, EPA approved visibility protection provisions into Oregon's State Implementation Plan (see 53 FR 47188). Oregon's visibility protection provisions are at Oregon Administrative Rule (OAR) 340–20–047, section 5.2. The visibility protection SIP provided three approaches to visibility protection: (1) A short-term strategy to be accomplished over a 5 year period to mitigate existing visibility impairment; (2) a long-range strategy to reduce fine particle emissions from agricultural field burning and forest prescribed burning over a 10–15 year period; and (3) on-going visibility protection afforded through the New Source Review permitting process. EPA approved the visibility SIP because it conformed to the federal visibility protection provisions outlined in 40 CFR 51.300, subpart P. On August 26, 1993, Oregon submitted changes to Oregon's regulations as proposed revisions to the visibility SIP.

C. What Does Oregon's 1993 Visibility SIP Submission Propose To Change and How Do These Changes Compare to the Federal Requirements?

The federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P. Many of the federal requirements set out in subpart P are specific to SIPs that contain BART controls on a stationary source. Currently there are no major stationary sources in Oregon that could be required to adopt BART controls, therefore the BART requirements in subpart P are not applicable to this review of the Oregon SIP.

How does Oregon's SIP submission compare with the federal visibility requirements? The federal regulations require states to: (1) Develop long-term strategies for improving visibility over a 10–15 year period; (2) assess visibility impairment; (3) establish BART emission limits (if applicable); and (4) implement visibility protection provisions under the Prevention of Significant Deterioration program. See 40 CFR 51.302. The first, second and fourth requirements are discussed below. The third requirement is not applicable to Oregon because no Federal Land Manager has certified impairment of visibility in a Class I area due to a specific stationary source.

What are the proposed changes to the long-term strategy for visibility protection and how do they compare to the federal requirements? The 1993 submission builds on the programs established in the earlier visibility SIP. Oregon set out a comprehensive plan for all its Class I areas. Focusing on vegetative burning, the 1993 submission: (1) Expands the period during which restrictions to protect visibility apply by approximately 15 days; (2) incorporates the Class I area visibility protection provisions of the Union and Jefferson County field burning ordinances (Union County Ordinance #1992–4 passed May 6, 1992, and Jefferson County Ordinance #0–58–89 passed May 31, 1989); (3) reduces the annual acreage allowed for research and hardwood conversion burning from 1200 to 600 acres per year; and (4) revises the Willamette Valley field burning restriction emergency clause to allow hardship requests for visibility protection exemptions beyond August 10th of each year. In addition to these changes, the 1993 visibility SIP submission proposes to decrease the frequency of the formal review of the visibility program by the Department of Environmental Quality from 3 to 5 years. However, EPA will take no action on this provision because at this time Federal visibility protection regulations require the states to review and revise as necessary the visibility program every three years. See 40 CFR 51.306(c). Thus the three year review period remains in the SIP.

EPA has determined that the 1993 submission is a general strengthening of the SIP because it includes additional provisions protecting visibility, such as the expansion of the visibility protection period, and the addition of field burning ordinances for Jefferson and Union County.

Visibility is actively monitored in the Oregon Class I areas. Visibility in the Class I areas has significantly improved from the conditions in the 1980s. Please see the Technical Support Document associated with this rule for further discussion on this issue.

The 1993 submission evaluated monitoring results for the summers of 1984 to 1989 as part of the State's assessment of the effectiveness of its past controls and choice of future controls needed. Oregon concluded that from 23% to 31% of the visibility impairment cases documented within the Eagle Cap Wilderness are caused by agricultural field burning in the Grande Ronde Valley. Oregon also identified Jefferson County agricultural field burning as a source of impairment within the central Oregon Cascade wilderness areas. Based on this assessment, Oregon continues to focus on emissions from agricultural burning.

EPA believes that Oregon's monitoring system and the SIP's use of these data satisfy the federal requirements to monitor visibility, assess the progress achieved in remedying existing impairment of visibility, assess changes in visibility since the last report, and use these assessments in the development of a long-term strategy. See 40 CFR 51.302(c)(ii), 51.305, 51.306(c)(1), and 51.306(c)(3).

40 CFR 51.307 sets out the requirements for evaluating the visibility impacts from any new major stationary source or major modification that would be constructed in an area

that is designated attainment or unclassified. The State of Oregon is fully delegated to carry out the Prevention of Significant Deterioration (PSD) program and complies with this section of the visibility provisions.

D. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include OAR 340–20–047, section 5.2 that became effective August 11, 1992. EPA is taking no action on the provision in OAR 340–20–047, section 5.2.4.2 and section 5.2.5.1, that changes the review period of the visibility SIP from three to five years.

II. Smoke Management Plan

A. What Is Oregon's Smoke Management Plan?

Oregon's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silvicultural wastes and the prescribed burning of forests. The Oregon SMP tries to balance essential forest land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke. The SMP establishes a permitting system for burning based on close cooperation of the Oregon Department of Forestry (ODF) and the Oregon Department of Environmental Quality (ODEQ). The SMP requires burners to obtain burning permits and to burn only under appropriate meteorological conditions.

Oregon's Smoke Management Plan is at OAR 629–43–043, Oregon Department of Forestry rules. On November 22, 1988, EPA incorporated the State of Oregon's smoke management program (OAR 629–43–043) and the ''Operational Guidance for the Oregon Smoke Management Program'' (Directive 1–4–1–601) into the SIP. See 53 FR 47188 (November 22, 1988). On August 26, 1993, Oregon submitted the Department of Environmental Quality Smoke Management Plan as amended and adopted as part of the Oregon Clean Air Act Implementation Plan (SIP) through Oregon Administrative Rule (OAR) 340–20–047, to EPA as a revision to the SMP portion of the Oregon SIP

B. How Does Oregon's 1993 Submission Change the Plan?

Through this 1993 SIP submission, Oregon is modifying its Smoke Management Plan to strengthen visibility protection of the Class I areas, and to provide for additional protections around nonattainment areas for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). EPA is approving Oregon's amendment to its Smoke Management Plan because it constitutes a general strengthening of the SIP.

One of the primary strengthening provisions of the Oregon Smoke Management Plan is the adoption of additional restrictions on burning through the establishment of a Special Protection Zone (SPZ) around each of the six PM–10 nonattainment areas in Oregon. When this rule was under development in 1992, there were six PM–10 nonattainment areas; Klamath Falls, Medford, Oakridge, Grants Pass, Eugene-Springfield, and La Grande. A new nonattainment area, Lakeview, was designated on October 25, 1993. See 40 CFR 81.338. The SMP does not identify a SPZ for Lakeview. Determined in part by geography, meteorology and location of forested areas, the 20 mile SPZ boundary around the six PM–10 nonattainment areas would contain additional restrictions on slash burning. In western Oregon, between November 15 and February 15, the slash burning restrictions are mandatory: (1) A prohibition on burning in the SPZ if the Department of Forestry forecaster determines weather conditions are likely to cause a smoke intrusion into the adjacent PM–10 nonattainment area; (2) monitoring of burns for at least 3 days and requirements to extinguish fires to prevent smoke from smoldering fires from affecting the nonattainment area; and (3) a prohibition on new ignitions in the SPZ when there is a residential wood combustion curtailment in the adjacent PM–10 nonattainment area between December 1 to February 15 (during ''Red'' woodburning curtailment). In eastern Oregon, these three restrictions would be voluntary for La Grande and Klamath Falls.

In the event that both a PM–10 nonattainment area fails to attain the National Ambient Air Quality Standard by the specified deadline, and a measured impact from slash smoke is determined to be a significant contributor to the PM–10 nonattainment, then additional smoke burning restrictions would take effect as contingency measures to the PM–10 nonattainment area plans.

The 1993 SIP revision revises the definition of slash to exclude brush generated by residential development land clearing. Instead, the burning of brush generated by residential development land clearing will be regulated by the Department of Environmental Quality's open burning rules.

For additional discussion of the previously described modifications and other changes to the smoke management plan proposed by the 1993 SIP submission, please see the Technical Support Document associated with this rule.

C. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider Smoke Management Plans in developing long-term strategies for visibility protection. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans (EPA–450/2–92–003). These are a few examples of how the federal government widely acknowledges the benefits of smoke management plans. However, there are no specific federal requirements for states to develop and adopt Smoke Management Plans. Nonetheless, when compared with many of the smoke management plans adopted by other states, Oregon's Smoke Management Plan is one of the stronger plans.

D. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include rules for the Oregon Department of Forestry. Specifically, OAR 629–24–301, that became effective on August 1, 1987 and the Smoke Management Plan at OAR 629–43–0043 that became effective on April 13, 1987, are approved. This action also approves Oregon Revised Statutes, ORS 477.515, last amended in 1971 into the SIP and modifies the *Operational Guidance for the Oregon Smoke Management Program,* Directive 1–4–1–601 that became effective on August 11, 1992.

III. Smoke Management Plan—Blue Mountain Revision

A. What Changes to the Smoke Management Plan Are Being Proposed?

On September 27, 1995, Oregon submitted a package of rules revising the Prevention of Significant Deterioration (PSD) program for Oregon. The package included several modifications to comply with existing federal requirements for the PSD program, as well as changes specific to the Oregon program. The 1995 submission sought to: replace Total

Suspended Particulate increments with PM–10 increments; change the boundaries for the Class I areas; change the PSD baseline date, and amend the Smoke Management Plan.

On March 7, 1997, EPA approved the changes submitted in the September 1995 package with the exception of approving the amendments to the Smoke Management Plan (see 62 FR 10457). In this action, EPA is approving the Smoke Management Plan amendments.

The 1995 submission amends the Smoke Management Plan in the Blue Mountains in eastern Oregon. The Blue Mountains comprise the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests in northeastern Oregon, the forest lands of the Baker Resource Area, Vale Bureau of Land Management (BLM) District, Central Oregon Resource Area, Prineville BLM District, and the Three Rivers Resource Area and the Burns BLM District. The 1995 submission creates a mandatory smoke management program that requires Forest Service and BLM to track annual emissions from prescribed burning and wildfire to protect against a violation of the PSD increment requirements. The 1995 submission requires prescribed burning to be curtailed if the emission target is reached. Should unexpected increases in wildfires cause the target level to be exceeded, the annual prescribed burning limit would be adjusted downward to offset these increases.

The PSD baseline time period for the Blue Mountains is set using the period of 1980 to 1993, inclusive. The amendments to the Smoke Management Plan establishes a total baseline emissions from prescribed burning and wildfire. The total baseline emissions are estimated to be 17,500 tons of PM–10 per year. The Smoke Management Plan distributes this increment between a wildfire target level of 2,500 tons of PM–10 per year, and a prescribed burning emission limit of 15,000 tons per year. The 1995 submission requires wildfire emissions to be estimated, and adjustments to the prescribed burning schedule to be made in response to these estimates.

Further, the Forest Service and BLM are required to conduct prescribed burning under smoke dispersion conditions which minimize smoke impacts and protect air quality in northeast Oregon, southeast Washington, and western Idaho. An important component of this program is the establishment of real-time monitoring of smoke impacts through a smoke management network operated by the Forest Service, with technical assistance from the Oregon Department of Environmental Quality. Should burning be determined to be causing a measurable smoke impact, aggressive mop-up or other measures would be used to reduce the duration or intensity of the smoke impacts.

B. What Are the Federal Requirements?

There are no specific federal requirements for Smoke Management Plans. The federal requirements for the Prevention of Significant Deterioration are outlined in 40 CFR 51.166. As noted above, EPA approved the revision of the baseline date for an area in northeastern Oregon in March 1997. EPA has reviewed the derivation of the 17,500 tons per year baseline and believes it is consistent with the Clean Air Act. EPA further believes that this Smoke Management Plan would improve Oregon's ability to try to control overall smoke impacts from forest fires. This is a creative approach to minimize air quality impacts from prescribed fires and wildfires based on strong cooperation among state air regulators, state land managers, and federal land managers.

C. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising Oregon's State Implementation Plan to include the ''Oregon Smoke Management Plan, Appendix 5, Operational Guidance to the Oregon Smoke Management Program, Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Volume 3, Section A1)'' with the effective date of July 12, 1995.

IV. Field Burning

A. What Is Oregon's field burning program?

Since the 1970's, Oregon has operated a field burning program to control particulate matter emissions from the burning of perennial and annual grass seed and cereal grain crops in the Willamette Valley. The Willamette Field Burning Rules are in OAR Chapter 340, Division 26. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside of the Willamette Valley is governed by OAR Chapter 340, Division 23, ''Rules for Open Burning.'' This action addresses changes to Division 26 only.

Over the years, Oregon has modified its field burning program. In 1985, EPA approved the field burning SIP. The field burning program was a permits and fee program. Burning permits were specific to location and might limit or define the methods a burner may use. The 1985 field burning SIP established a cap on the maximum acreage to be open burned annually in the Willamette Valley. This acreage cap was set at 250,000 acres annually. The 1985 field burning SIP included a record keeping provision that enabled the program to track acreage burned. Based on meteorological assessments of wind conditions and mixing heights, the field burning program had daily burning authorization criteria.

EPA last approved the propane flaming annual acreage cap and several definitions for the Oregon field burning program in 1997 (62 FR 8385, February 25, 1997). The approved modifications to Division 26 were those that were effective in Oregon on March 10, 1993. The last substantive EPA approval of Division 26 occurred in 1985 (50 FR 31368, August 2, 1985). On July 3, 1997, ODEQ submitted revisions to the field burning program as a revision to Chapter 340, Division 26, ''Rules for Open Burning (Willamette Valley)'.

B. How Does This SIP Submission Change the Program?

What are the significant changes proposed by the July 3, 1997, submission? This 1997 submission proposes to significantly revise the 1985 field burning SIP. Earlier in 1997, EPA adopted several housekeeping changes to the Willamette Valley field burning rule (see 62 FR 8385, February 25, 1997). The February 1997 action was not intended to address any substantive changes to the field burning program. In February 1997, EPA specifically approved the definitions for: ''fire safety buffer zone,'' ''marginal day,'' ''open burning,'' ''propane flaming permit,'' ''released allocation,'' and ''stack burning permit.'' EPA also approved a maximum acreage to be propane-flamed annually in the Willamette Valley.

The July 3, 1997, submission modifying the Oregon field burning rules establishes three types of burning: open field burning, propane flaming and stack or pile burning. The 1997 submission reduces the total acreage allowed to be open burned, establishes a separate acreage cap for propane flaming, exempts stack or pile burning from the field burning cap and changes the registration, permitting and fee structure for all these burns. The 1997 submission also adds two new sections: Sections 340–26–033 and 340–26–055 which regulate preparatory burning and stack or pile burning. This 1997 submission also repeals Section 340–26–025 which provided for Civil Penalties.

C. What Are The Changes in Acreage Limitations?

How are acreage limitations affected by the new submission? In the 1985 field burning SIP, Oregon established that the maximum acreage to be open burned annually would not exceed 250,000 acres. The 1985 SIP also set a daily burn limit of 46,934 acres per day. Propane flaming was not included under this acreage limitation. In supporting documentation on the July 3, 1997, SIP revision, provided to EPA by Oregon on December 22, 1999, Oregon asserts that stack or pile burning were not considered to be covered by this limitation, either. EPA disagrees. In reading the language used in the 1985 SIP, as well as the language adopted under the Fire Marshal Rules that were first promulgated in 1988, there was a consistent division only between field burning and propane flaming. ''Stack or pile burning'' was not considered to be a separate category. EPA believes that the 250,000 annual acreage limit covered both open field burning and stack or pile burning.

As noted earlier, the 1997 submission defines three different methods of burning: open field burning, propane flaming, and stack or pile burning. The 1997 submission treats each of these types of burns differently. One of the most aggressive forms of control in Oregon's field burning program is the significant decrease in the maximum acreage that can be open field burned annually. The maximum allowable acreage decreased from 140,000 (for 1992–3) to 120,000 (for 1994–5) to 100,000 (for 1996–7) to 40,000 for 1998 and thereafter. Maximum acreage of fields to be propane flamed annually is set at 75,000 acres. No specific acreage caps have been set for stack or pile burning, however, the fees for stack or pile burning incrementally increase annually to discourage this type of burning.

What is the effect of the acreage limitations proposed in the 1997 submission? Combining the limits for open burning and propane flaming, the maximum combined acreage to be burned annually is 140,000 acres. This is a decrease from the 250,000 annual limit on open burning established in the 1985 SIP. Stack and pile burning is not included in this annual cap.

As noted above, EPA believes that stack or pile burning was included in the 1985 SIP's annual limit of 250,000 acres. In 1999, Oregon estimated the amount of acreage treated by stack or pile burning fell from approximately 60,000 acres in 1988 to 30,000 acres in 1991, to 14,574 acres in 1992, to 8,588 acres in 1997. (See December 22, 1999 letter from Laurey Cook, ODEQ, to Claire Hong, EPA Region 10). EPA believes that these significant decreases in the amount of acreage stack or pile burned are likely to continue due to the conversion of agricultural lands to other uses, the fall in hay prices, and the increased cost of sanitizing the fields. Even if we were to use the historically much higher 1988 levels of stack or pile burning, the overall acreage that would be burned would still fall below the limits established in the 1985 SIP for annual limits.

In addition to the change in annual acreage limits, another change to the acreage limitations focused on acreage burned per day. Under the 1985 SIP, the daily cap on acres field burned was 46,934 acres. This cap was based on air quality dispersion modeling that indicated that burning this acreage would not result in a violation of the National Ambient Air Quality Standards or Prevention of Significant Deterioration increments. The 1997 submission would repeal this daily acreage cap. EPA believes that repealing this daily acreage limit would not result in a weakening of the SIP due to the significantly decreased acreage that can be burned over the year for all types of burning. Although not a direct comparison, the annual limit in the 1997 submission for open burning is lower than the 1985 daily cap on acres burned. Additionally, the 1997 submission adds acreage limits for steep terrain, training fires, and preparatory burns. When evaluated in total, EPA believes all these changes to acreage limits is a general strengthening of the SIP.

In reviewing the 1997 submission, EPA considers the impact of rule changes on air quality. Comparing the total acreage allowed to be burned under the 1985 SIP to the total acreage allowed to be burned under the 1997 submission is a rough indicator of what air quality impacts may be. However, there are factors in addition to decreased acreage that support the idea that this 1997 modification would result in better air quality. The 1997 submission encourages the use of stack or pile burning over open field burning. In general, stack or pile burning tends to emit less smoke than open field burning due to higher combustion rates because of the concentration of materials. While this correlation does not hold true if the stacks or piles are wet, it is likely that encouraging the use of stack or pile burning over open field burning would result in lower emissions. Oregon estimates that an acre of straw burned in the field emits sixty percent more particulate matter than an acre of straw removed and burned in a stack. When evaluated in total, EPA believes that the overall impact of changes to acreage limitations would be a strengthening of the SIP.

D. What Are the Changes in Registration and Permitting of Different Types of Burning?

Two of the main changes between the 1985 SIP and the 1997 submission is the change in the treatment of propane flaming and the addition of stack or pile burning as a separate category of burning. In the 1985 SIP, propane flaming was exempt from rules OAR 340–26–010 through 340–26–015 and, therefore not subject to open field burning requirements related to registration, permits, fees, limitations, allocations and daily burning authorization criteria. The 1997 submission dramatically modifies the treatment of propane flaming. The 1997 submission prohibits individuals from burning in a manner contrary to the Department's conditions. Section OAR 340–26–010 (5), states that, ''No person shall cause or allow open field burning, propane flaming, or stack or pile burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.'' The 1997 submission would repeal the exemption of propane flaming from registration, permitting and other general controls established for field burning. This does not mean that propane flaming is treated in the exact same manner as field burning. It is not. Rather, propane flaming is more controlled under the 1997 rules than it was in the 1985 SIP.

Stack or pile burning's treatment under Division 26 is also clarified by the 1997 submission. The 1997 submission creates a new category of burning known as stack or pile burning. The 1997 submission does not include stack or pile burning in the annual acreage limitations established for field burning. As discussed earlier in this **Federal Register** notice, and in the TSD that accompanies this action, EPA believes that failing to include stack or pile burning in the annual acreage limits does not weaken the SIP because of the significant decrease in the acreage that can be burned under the annual cap.

The 1997 submission also proposes to change the treatment of stack or pile burning by exempting stack or pile burning from the registration process. Although Oregon would no longer separately register acres that would be

stack or pile burned, Oregon would continue to permit stack or pile burning. Thus, Oregon would still be able to track the acres to be stack or pile burned through the permitting process. Oregon also proposes to clarify that stack or pile burning will be subject to the State Fire Marshal Rules that prohibit burning within 1/4 mile of major roadways, and that can impose additional conditions on burning. Stack and pile burning must be conducted with a valid permit, must follow established procedures of the Department, and is prohibited on any day, or at any time, if the Department has notified the State Fire Marshal that such burning is prohibited because of adverse meteorological or air quality conditions.

What is the overall impact of these changes to the treatment of stack or pile burning? Although stack or pile burning will no longer be registered, it continues to be permitted, thus allowing sufficient regulatory authority to control stack or pile burning. EPA believes the impact of these changes would not constitute a relaxation of the SIP.

E. Are There Any Other Significant Changes Proposed by the 1997 SIP Submission?

The 1997 submission incorporates the Rules of the State Fire Marshal by reference into 340–26–001, 340–26–015, 340–26–033, 340–26–045, and 340–26–055. The rules of the State Fire Marshal, safety requirements for field burning and propane flaming, are at Oregon Administrative Rules 837–110–010 through 837–110–160. Adopting these rules by reference is intended to increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways. The State Fire Marshal rules establish a fire safety buffer zone around highways and roadways. The State Fire Marshal rules outline additional controls on the manner and timing of burns in these areas.

The 1997 submission repeals Section 340–26–025 entitled ''Civil Penalties''. While SIP revisions are evaluated for enforceability, rules describing state enforcement authority and penalties are not appropriate for inclusion into the SIP to avoid potential conflict with EPA's independent authorities. Therefore, EPA is taking no action on these provisions of the Oregon rules.

Other rule changes include systematically referencing propane flaming and stack or pile burning to the rules to clarify which criteria apply to different types of burns. The ''prohibition conditions'' under daily burning authorization criteria are tightened and the acreage limitation for experimental burning are lowered from 5000 to 1000 acres. Several definitions have been added, and the definition for ''grower allocation'' has been modified to tighten the amount of acreage that could be allocated in the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually.

F. What Are the Federal Requirements for Field Burning?

Similar to smoke management plans, there are no federal requirements for field burning controls. How then does EPA evaluate the adequacy of these significant changes proposed by the 1997 submission? Section 193 of the Clean Air Act, entitled the ''General Savings Clause'' provides that, ''no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in an area which is a nonattainment area for any air pollutant, may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

The pollutant of concern is PM–10 and the area of interest is the Willamette Valley, which contains several PM–10 nonattainment areas. The criteria for approval of these revisions is whether the 1997 submission would pose a relaxation of the controls that are in effect in the existing State Implementation Plan.

The majority of the changes proposed by the 1997 submission, such as the specific incorporation of the State Fire Marshal rules, strengthen the controls on field burning. The area most likely to be seen as a relaxation is the exemption of stack or pile burning from the annual acreage cap for field burning. However, as discussed above, EPA believes the impacts of this change are not a relaxation of the SIP.

In addition to reviewing the regulatory stringency of the 1997 submission compared to the 1985 SIP, it may be useful to evaluate the air quality in the Willamette Valley. The air quality data do not raise specific concerns about the contribution of field burning to the exceedances of the PM–10 standard. Please see the associated Technical Support Document for a fuller discussion.

G. Which Regulations Are Being Approved Through This Federal Action?

In this action, EPA is revising the Oregon State Implementation Plan to include OAR Chapter 340, Division 26 effective May 31, 1994. Further, EPA is incorporating by reference the rules of the State Fire Marshal OAR 837–110–110 through 837–110–160, effective February 7, 1994.

Please note that since these SIP revisions were adopted by the state, other modifications to Oregon's rules may have been adopted by the Environmental Quality Commission and submitted to the EPA for approval (e.g. the rule recodification package). Approval of the SIP revisions discussed in this action does not rescind any local rule amendments that were subsequently filed and submitted.

V. 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 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), nor will it 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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). This rule will be effective December 31, 2001 unless EPA receives adverse written comments by December 3, 2001.

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 31, 2001. 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 and Immunity Law

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 in 40 CFR Part 52

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

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: July 23, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is 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)(135) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(135) The Oregon Department of Environmental Quality submitted a Visibility SIP revision on August 26, 1993, smoke management provisions on August 26, 1993, revisions to the Oregon field burning program on July 3, 1997, and amendments to the smoke management program regarding the Blue Mountains rules on September 27, 1995. EPA approves these revisions with the exception of the provision that changes the review period of the Visibility SIP from every three years to every 5 years (OAR 340–20–047 Section 5.2.4.2 and OAR 340–20–047 Section 5.2.5.1)

(i) Incorporation by reference.

(A) OAR 629–24–301 effective August 1, 1987.

(B) OAR 629–43–043 effective April 13, 1987.

(C) ORS 477.515 effective 1971.

(D) Directive 1–4–1–601, *Operational Guidance for the Oregon Smoke Management Program*, effective October 23, 1992.

(E) OAR 340–26–0035 and 340–26–0040, effective March 10, 1993; OAR 340–26–0001, 340–26–0031, 340–26–0033, and 340–26–0045, effective May 11, 1993; 340–26–0003, 340–26–0005, 340–26–0010, 340–26–0012, 340–26–0013, 340–26–0015, and 340–26–0055, effective May 31, 1994.

(F) OAR 837–110–0010, 837–110–0020, 837–110–0030, 837–110–0040, 837–110–0070, 837–110–0080, 837–110–0090, 837–110–0110, 837–110–0120, 837–110–0130, and 837–110–0150, effective February 7, 1994; 837–110–0160, effective August 11, 1993; and 837–110–0050, 837–110–0060, and 837–110–0140, effective February 7, 1989.

(G) Union County Ordinance #1992–4 effective July 1, 1992.

(H) Jefferson County Ordinance #–0–58–89 effective May 31, 1989.

(I) Remove the following provision from the current incorporation by reference: OAR 340–26–025 effective March 7, 1984.

(ii) Additional Materials.

(A) OAR 340–20–047 Section 5.2 effective August 11, 1992 (except section 5.2.4.2 and section 5.2.5.1 introductory paragraph)

(B) ''Oregon Smoke Management Plan, Appendix 5, Operational Guidance for the Oregon Smoke Management Program, Criteria for National Forest and Bureau of Land Management Lands in the Blue Mountains of NE Oregon (Volume 3, Section A1)'', effective July 12, 1995.

[FR Doc. 01–27279 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[PA–T5–AC2001a; FRL–7093–3]

Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action fully approving a partial operating permit program under title V of the Clean Air Act (the Act). This program will allow the Allegheny County Health Department (ACHD), located in the Commonwealth of Pennsylvania, to issue federally enforceable operating permits to all major stationary sources and certain other affected minor sources in its jurisdiction. The ACHD's operating permits program was submitted to EPA by the Commonwealth of Pennsylvania on behalf of Allegheny County. By this same rulemaking, EPA is also withdrawing its previously published notice of proposed rulemaking dated December 6, 1999. Any parties interested in commenting on this rulemaking granting full approval to the ACHD's operating permits program should do so at this time.

DATES: This rule is effective on December 17, 2001 without further notice, unless EPA receives adverse written comment by December 3, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Linda Miller, Permits and Technical Assessment Branch at (215) 814–2068 or by e-mail at miller.linda@.epa.gov. Please note that comments on this rule must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1998 and March 1, 2001, the Pennsylvania Department of Environmental Protection (PADEP) submitted a request on behalf of the Allegheny County Health Department (ACHD) for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County (the County). The ACHD will be the permitting authority for the operating permit program. On December 6, 1999, EPA proposed approval of the County's partial operating permit program (64 FR 68066). The ACHD has subsequently revised its regulations. These revisions strengthen the ACHD's operating permitting program. In this final rulemaking, EPA is both withdrawing its previous proposal (64 FR 68066) and approving the County's part 70 operating permit program as submitted on November 9, 1998 and amended on March 1, 2001.

This section provides additional information on EPA's approval of the partial operating permit program by addressing the following questions:

What is the operating permit program?
What is a partial program approval?
What are the operating permit program requirements?
What is being addressed in this document?
What is not being addressed in this document?

What Is the Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet established Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA or the Act). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined. Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the Act or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources in Allegheny County include, but are not limited to, those that have the potential to emit 50 tons per year or more of volatile organic compounds; 100 tons per year or more of certain other criteria pollutants; those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Act, or those that emit 25 tons per year or more of a combination of HAPs. In an area not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide,