proposed rulemaking on or before April 30, 1998.

Should the Agency receive such comments, it will publish a document withdrawing this rule. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 June 1, 1998. 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), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (124) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(124) On October 30, 1997 the director of the Oregon Department of Environmental Quality (ODEQ) submitted a source specific Reasonable Available Control Technology (RACT) determination as a SIP revision for VOC emissions and standards.

(i) Incorporation by reference.

(A) Letter dated October 30, 1997 from the Director of ODEQ submitting a SIP revision for Dura Industries, Inc. , an architectural surface coating operation in Portland, Oregon—permit #26–3112 dated September 14, 1995.

[FR Doc. 98–8057 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0022 and CO–001–0023; FRL–5981–4]

Approval and Promulgation of Air Quality Implementation Plan; Colorado; PM10 and NO_X Mobile Source Emission Budget Plans for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996. The PM10 and NO_X emissions budgets contained in these SIP revisions are used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for the applicable periods required by EPA's conformity rules. EPA originally proposed approval of the two emissions

budget SIPs on October 3, 1996. Based upon comments received on that proposal, EPA published a second proposal on August 5, 1997, seeking additional input on certain issues. In reaching its final decision to approve the July 18, 1995 and April 22, 1996 PM10 and NO_X SIP submittals, EPA has considered the comments it received on both its October 3, 1996 and August 5, 1997 **Federal Register** documents.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the State's original submittals, copies of comments received on both the October 3, 1996 and August 5, 1997 proposals and other information are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, EPA Region VIII,(303)312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1995, the Governor of Colorado submitted a SIP revision for Denver for PM10 that included attainment and maintenance demonstrations. In making that submittal, the Governor requested that EPA not act on the motor vehicle emissions budgets (also referred to as mobile source emissions budgets) for PM10 and NO_X contained in Chapter XI of the PM10 SIP element. Motor vehicle emissions budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Clean Air Act (CAA or Act). EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

On July 18, 1995 and April 22, 1996, the Governor submitted SIP revisions for Denver that included additional motor vehicle emissions budgets for PM10 and NO_X. EPA proposed approval of both of these emissions budgets on October 3, 1996 (61 FR 51631) along with the Denver PM10 SIP. Following a 60-day public comment period, EPA finalized approval of the Denver PM10 SIP on April 17, 1997 (62 FR 18716). At that time, EPA did not take final action on the emissions budget submittals in order to more thoroughly consider comments received on the proposals during the public comment period. EPA subsequently decided to seek additional public comment regarding the budget submittals and, on August 5, 1997, published a second notice of proposed rulemaking to take comment on certain issues raised by commentors on the October 3, 1996 notice of proposed rulemaking. Specifically, EPA sought additional comment on the following issues: Whether Colorado met the notice and public hearing requirements of the Clean Air Act in adopting the PM10 emissions budget; whether Colorado adequately considered growth in non-mobile sources in setting the emissions budgets; and whether Colorado should have identified a separate NO_X budget in 1998 (the maintenance year) of 102.7 tons per day, to maintain consistency with the maintenance demonstration. For a more complete description of EPA's request for additional comments, please see EPA's August 5, 1997 notice of proposed rulemaking at 62 FR 42088.

II. Response to Public Comments

In this notice, EPA is taking final action and addressing comments relating to its October 3, 1996 and August 5, 1997 notices of proposed rulemaking. Generally, EPA has addressed comments on each notice separately. Where this is not the case, EPA has so indicated.

A. October 3, 1996 Proposal: The following numbered paragraphs contain summaries of the comments received on the October 3, 1996 notice of proposed rulemaking. Each comment summary is followed by EPA's response.

1. The PM10 budget that the Governor submitted on July 18, 1995 includes permanent budgets of 54 and 60 tons. However, the Colorado Air Quality Control Commission's (AQCC) rule provided that these budgets would expire in 1998. Since the legislature did not eliminate the 1998 expiration of these budgets, rulemaking by the AQCC would have been required to eliminate the 1998 expiration. The AQCC did not conduct such rulemaking, and therefore, the permanent 54 and 60 ton budgets that the Governor submitted are without authority and the notice and hearing requirements of the CAA were not met.

This commentor augmented his comments on this point in response to EPA's August 5, 1997 notice, as follows: The legislature did not even mention, and therefore did not change or delete, the sunset language contained in section C.4. of the AQCC's budget rule. Nor does S.B. 95–110 specify what the text of the rule shall be or repeal or limit the Commission's authority to revise the emission budgets. Because neither the legislature nor the AQCC legally amended section C.4. of the rule submitted to EPA, section C.4. remains a part of the rule, and EPA must approve all or none of the rule. Also, other entities at the State level lack authority to submit part of the AQCC's rule and omit other parts. Only the AQCC or the legislature, following proper notice and hearing procedures, had this authority.

EPA Response: Contrary to the commentor's assertion, EPA believes the Colorado legislature, through its passage of Colorado S.B. 95–110, did eliminate the 1998 expiration (or sunset) of the 54 and 60 ton budgets. In EPA's view, the legislature specifically eliminated the reversion to a 44 ton budget from the SIP revision and designated the 60 ton budget as the budget that would apply in the future for purposes of federal transportation conformity. For example, the language of S.B. 95–110 reads as follows:

> ''The revisions to the Denver element of the PM10 State Implementation Plan adopted by the Commission on February 16, 1995, which contain a sixty tons-per-day PM10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan * * * The sixty tons-per-day emissions budget shall, unless modified by the Commission through rule-making, apply for federal transportation conformity and is included in the State Implementation Plan only as required by the federal Act.''

This language makes clear that the legislature intended that there would be no reversion to a budget of 44 tons per day. Given this, the commentor's reading appears to be inconsistent with the legislative intent because such reading would result in the expiration of the 54 and 60 ton budgets on January 1, 1998 and their replacement with the 44 ton budget.

In addition, the legislature was explicit that the 60 ton budget should apply for the purposes of federal transportation conformity. The commentor reads this directive out of the legislation by focusing (in his comments on both of EPA's notices) on the second clause of the statute, which states ''and is included in the State Implementation Plan only as required by the federal Act.'' The commentor

interprets this to mean that the legislature left it to the AQCC to determine whether a budget was necessary to meet Clean Air Act requirements.

Concluding that no budget is required to meet nonattainment area SIP requirements, the commentor concludes that the legislature would not have wanted the budget in the SIP. However, EPA believes the better reading is that the legislature was indicating that the budget would be part of the SIP as necessary for it to be used for federal transportation conformity purposes, and that the legislature was not leaving it to the AQCC to decide whether the budget was required by the CAA. In this regard, it is noteworthy that the legislature used the present tense—the 60 ton budget ''*is* included in the State Implementation Plan * * *'' (emphasis added.) Under EPA's conformity rule, the budget may not be used unless it is part of a submitted SIP. In this sense, there is a mandate in EPA's rule that the budget be part of the SIP prior to use for conformity purposes, and it is reasonable to read Colorado S.B. 95–110 as mandating the use of the 60 ton budget.

EPA does not believe the legislature had to specify new rule language in order to amend the SIP. The State legislature does not adopt rules, and thus, there was no need for the legislature to specify replacement rule language. It is also irrelevant that the legislature did not repeal or limit the AQCC's authority to revise the emission budgets. The legislature was indicating that the 60 ton budget would apply unless modified by the AQCC through rulemaking at some future date. The legislature was not providing that the 60 ton budget would only apply if endorsed by the AQCC through rulemaking.

Comments submitted by the Colorado Attorney General's Office support EPA's reading of the legislation. See February 13, 1997 letter signed by Frank Johnson. EPA believes it is reasonable to accord the interpretation of the Attorney General's Office some deference given that it is State legislation and not federal law that is at issue.

Although section 25–7–124(1) provides that the AQCC is the regulatory entity under Colorado law with authority to adopt SIP revisions, EPA believes the legislature retains the authority to adopt SIP revisions in a given instance. That is what the legislature did through the passage of S.B. 95–110.

2. Submission of the 54 and 60 ton budgets violates State law because State law prohibits submission to EPA of measures not required by the CAA. Specifically, C.R.S. sections 25–7–105(1)(a)(III) and 25–7–105.1(1) prohibit the submission of rules or requirements not required by the federal act. Motor vehicle emission budgets are not required by the CAA and therefore, the 54 and 60 ton budgets were not lawfully submitted to EPA.

EPA Response: As a preliminary matter, EPA is not convinced that it should or can take cognizance of the State's compliance or lack thereof with C.R.S. section 25–7–105.1(1). It is well-established in case law under the CAA that EPA must approve a SIP submission if it meets the minimum requirements of section 110 and other relevant sections of the CAA and does not otherwise conflict with the CAA. See, *e.g., Union Elec. Co.* v. *E.P.A.,* 96 S.Ct. 2518 (1976). Even if the State should not have submitted the 54 and 60 ton budgets to EPA under State law, nothing in C.R.S. section 25–7–105.1(1) suggests that the State will be unable to implement or enforce the budgets. Thus, there is no apparent conflict with the requirements of section 110(a)(2)(A) or (E) of the CAA. To the extent C.R.S. section 25–7–105.1(1) purports to restrict what constitutes part of the federally enforceable approved SIP, EPA believes the State legislature lacks the authority to amend the relevant sections of the CAA and the Administrative Procedures Act with respect to SIP approval. The burden is on the State to comply with C.R.S. section 25–7–105.1(1), and EPA should not be forced to assume that burden. See *Union Elec. Co.* v. *E.P.A.,* 96 S.Ct. 2518, 2528–2529 (1976). If the commentor believed the State violated C.R.S. section 25–7–105.1(1), EPA believes the commentor's recourse would have been to challenge the State's submission of the budgets in State court. It is not EPA's role to assure compliance with this State law.

Notwithstanding the foregoing, EPA believes the State legislature issued a specific directive in this case that the 60 ton budget would apply for purposes of conformity determinations. See EPA's response to comment II.A.1., above. Thus, even if the commentor is correct that these budgets were not otherwise required by the CAA and thus, normally could not have been properly submitted by the State pursuant to C.R.S. section 25–7–105.1(1), the legislature had the authority to disregard its general restriction on submitting SIPs not required by the CAA (as set forth in C.R.S. section 25–7–105.1(1)) and to adopt and require the use of the 60 ton budget. In EPA's view, the legislature's specific directive regarding the 60 ton budget overrides the more general proscription contained in C.R.S. section 25–7–105.1(1).

3. The motor vehicle emissions budget (MVEB) does not provide for attainment of the NAAQS. Specifically, the 60 ton budget will result in NAAQS violations at numerous receptor areas unless emissions are reduced in those receptor areas below the levels allowed by the 60 ton regional budget. The regional budget should reflect the values necessary to show attainment in areas where the 60 ton budget would result in NAAQS violations. Also, values necessary to show attainment for areas that would otherwise violate should be used to establish subregional budgets for those areas. The CAA does not allow the substitution of future dispersion modeling for the setting of appropriate emissions budgets.

EPA Response: Contrary to the commentor's assertion, the 60 ton budget already reflects the necessary emissions reductions to show attainment in all of the receptor grids. This is described in the SIP itself and the October 19, 1995 Kevin Briggs [1] memo that the commentor provided with his comments. According to the Kevin Briggs memo, the uncontrolled 2015 scenario would result in mobile source emissions of 68 tons per day with NAAQS violations in a number of grids. The State reduced emissions sufficiently in the violating grids to model attainment in those grids. After making these reductions, the State summed the emissions from all grids and arrived at a budget of 60 tons.

For purposes of responding to the comment, EPA will assume that the commentor meant that the State had not adopted control measures in the SIP that would achieve the 8-ton reduction (from 68 to 60 tons per day) in the violating grids in 2015. The Act clearly requires adopted, enforceable control measures as needed to support attainment and maintenance demonstrations required by Part D of the Act. However, as discussed in the preamble to the recently-adopted revisions to the conformity rule (62 FR 43787, August 15, 1997), EPA believes that it has the flexibility to approve budgets for years beyond the required attainment or maintenance SIP for transportation conformity purposes based on less rigorous demonstrations than are required for these SIPs. In particular, EPA believes it has the authority to approve budgets for years beyond the attainment or maintenance SIP based in

[1] Mr. Briggs is a modeler in the Technical Services Program, Air Pollution Control Division, Colorado Department of Public Health and Environment.

part on enforceable commitments in the SIP to adopt specific controls in the future, or on commitments in the SIP to adopt offsetting emission reductions in the future, as necessary to produce the required emissions reductions.

In this case, the MVEB SIP goes beyond a simple commitment to adopt any needed controls or reductions in the future, because the requirement for dispersion modeling carries with it a mandate for adoption of any future controls necessary to provide for attainment of the NAAQS. DRCOG must achieve the adoption of or obtain enforceable commitments for any control measures necessary to ensure that dispersion modeling for each conformity determination shows no violations of the NAAQS prior to making a conformity determination. This approach to the adoption of controls has two advantages: First, it is self-enforcing (if the dispersion modeling shows violations, DRCOG cannot adopt transportation plans and TIPs); second, it requires a reassessment of control strategies each time a conformity determination is carried out, rather than a one-time effort to adopt controls in advance which may later become obsolete due to changes in the location or magnitude of emissions (and thus, modeled violations). EPA believes that the SIP's requirement for dispersion modeling and future adoption of necessary controls satisfactorily complies with the policy options expressed at 62 FR 43787 for budgets for years beyond the attainment or maintenance demonstration, and is approving this requirement and the 60 ton budget for Denver. EPA would not approve the 60 ton budget for Denver without its companion modeling requirement and the associated requirement for adoption of controls prior to each conformity determination. It should also be noted that the State commits in the SIP to adopt any control measures relied on for future conformity determinations into the SIP if necessary to demonstrate continued maintenance of the standard. See EPA's response at II.A.4., below.

The commentor is correct that the State did not establish subregional budgets. However, EPA's regulations do not require that an area establish subregional budgets. The preamble to EPA's November 24, 1993 conformity rule states, ''The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard.'' 58 FR 62196 (emphasis added.) This language makes clear that the establishment of subregional budgets is optional.

Regarding the use of dispersion modeling, EPA agrees that the Act precludes the use of dispersion modeling as a substitute for an emissions budget test. However, EPA's conformity rule did not anticipate situations where a regional dispersion modeling analysis would be used in addition to an emissions budget test. EPA does not believe that such an application of dispersion modeling is precluded by either the Act or the conformity rule. As a practical matter, dispersion modeling in conjunction with an emissions test is at least as protective as establishing and using subregional budgets, because in dispersion modeling a certain target level of emissions has to be met in each grid in order for each grid to show attainment.[2] Even if subregional budgets were adopted, it is quite likely that they would not be developed for each grid. In such a case, it might be possible to show conformity using subregional budgets in cases when it would not be possible using dispersion modeling.

The requirement for dispersion modeling in addition to a budget test is certainly more protective of the NAAQS than the budget-only process envisioned by the conformity rule. The conformity rule only requires the identification of and compliance with a region-wide budget. It is conceivable that an area could show conformity to a region-wide budget and still have localized violations of the NAAQS because growth in emissions occurs in different areas than anticipated. In a dispersion modeling approach, these same localized violations of the NAAQS would preclude a conformity finding.

In summary, the SIP's requirement for a region wide budget in combination with dispersion modeling clearly meets the minimum requirements of the conformity rule, and is at least as protective of the NAAQS as subregional budgets would be.

[2] In this case, the SIP requires that the Denver Regional Council of Governments (DRCOG) support each conformity determination with a dispersion modeling analysis that shows that each grid in the modeling domain will be in attainment, considering the emissions expected from implementation of the transportation plan or Transportation Improvement Program (TIP). If the modeling analysis shows that emissions reductions are needed in any locations in order to provide for future maintenance of the NAAQS, it is incumbent upon DRCOG to identify and ensure implementation of any measures needed to provide those reductions. Thus, DRCOG must satisfy two tests to demonstrate conformity: Compliance with the 60 ton budget, and a dispersion modeling analysis showing no violations.

This commentor also included comments indicating that the PM10 SIP does not include necessary and/or enforceable control measures that will lead to attainment and maintenance of the NAAQS. In particular, the commentor indicated that VMT growth was higher than the SIP anticipated and that the SIP contained no measures to ensure VMT would remain at the SIP-anticipated levels. EPA responded to these comments when it approved the PM10 SIP and will not repeat the comments or responses here. See 62 FR 18716 (April 17, 1997). For purposes of this notice, EPA would add that it does not believe Congress intended, through section 176 of the CAA, to change the way in which States must conduct attainment or maintenance demonstrations. As noted in the April 1997 notice, EPA believes that it may allow a reasonable margin of error for VMT estimates in attainment and maintenance demonstrations, and EPA concludes that no different result should be required for purposes of establishing conformity-related motor vehicle emissions budgets. It should also be noted that any increased VMT will have to be taken into account in any future conformity determinations, and will ultimately make it harder to demonstrate conformity.

4. The submitted MVEB unlawfully attempts to transfer authority to adopt and implement control measures. The commentor objects to the 60 ton budget because the SIP gives DRCOG the responsibility for identifying any necessary controls to achieve emission reductions needed to demonstrate conformity. The commentor believes that this is a delegation of responsibility from the AQCC to DRCOG, in violation of the Act and State law. The commentor further states that any such controls are without legal authority and may not be treated as part of the SIP or be given emissions reduction credit for purposes of conformity.

EPA Response: EPA's conformity rule envisions situations where regulatory and non-regulatory control measures may be needed to provide emissions reductions for a conformity determination. Here, the AQCC is not delegating its authority to adopt control measures, only to identify them. If any measures identified as necessary by DRCOG require a State regulation in order to be implemented (for example, a revision to the I/M or oxygenated fuels program regulations), the AQCC would still need to adopt such regulation or regulation revision pursuant to applicable State law, or meet one of the other requirements in 40 CFR 93.122(a)(3), before DRCOG could take

credit for these emissions reductions in its conformity determination.

However, the conformity rule does not require all regulatory control measures needed for a conformity determination to be incorporated into the SIP, as the commentor asserts. Also, not all control measures for conformity purposes require a regulation in order to be implemented, such as changes in localized street sanding and sweeping practices. EPA is satisfied with DRCOG's current practice of obtaining commitments from local entities to implement non-regulatory control measures and incorporating these commitments into its conformity determinations, just as it obtains commitments from local entities to implement transportation improvement projects during the time frame of the plan and TIP.

It is also worth noting that the SIP, at page XI–9, states, ''Any control measure relied on for a conformity determination shall be included in a revised attainment or maintenance SIP unless it is not necessary to demonstrate attainment or maintenance of the standard.'' EPA views this as a commitment on the part of the State to adopt any measures which are necessary to show continued attainment and maintenance of the standard.

5. The mobile source emissions budgets will ensure that future regional transportation plans and programs will continue to help the region attain and maintain the PM10 standard. Additionally, the budgets are entirely consistent with the conformity provisions of the Clean Air Act Amendments of 1990 and EPA guidance.

EPA Response: EPA agrees that the budgets are consistent with the CAA's conformity requirements.

6. Enforceable budgets that would have reduced emissions volumes in the region were agreed to in February 1995, but the intercession by the legislature reduced these to little more than a suggestion.

EPA Response: EPA agrees that the legislature changed the PM10 budgets. However, EPA believes the budgets are consistent with the requirements of the CAA and EPA's conformity rule, as described in more detail above.

B. The Colorado Attorney General's Office submitted comments in a letter dated February 13, 1997, signed by Frank Johnson, Assistant Attorney General, that respond to several of the comments described in Section II.A., above. The following numbered paragraphs contain summaries of the relevant comments from Mr. Johnson's February 13, 1997 letter. Each comment summary is followed by EPA's response.

1. The Colorado legislature amended the SIP to eliminate the reversion to a 44 ton PM10 budget and to specify a 60 ton PM10 budget. The language of C.R.S. section 25–7–105(1)(a)(III) itself and the legislative history of the statute indicate that the legislature intended a 60 ton PM10 budget to apply for purposes of federal conformity. Thus, no further rulemaking action by the AQCC was necessary.

EPA Response: EPA agrees with this interpretation of C.R.S. section 25–7–105(1)(a)(III) and believes the interpretation is entitled to deference.

2. The references to the 60 ton budget in C.R.S. section 25–7–105(1)(a)(III) include the smaller emissions budgets for the years before the 60 ton budget applies. The Colorado legislature used ''sixty tons-per-day emissions budget'' as a shorthand to describe the interim budgets that apply before 2006 and the 60 ton budget that applies in 2006 and after. The legislature eliminated the provision of the budgets that contained the expiration of the higher budgets and reversion to 44 tons; the legislature did not intend to change the structure of interim budgets leading to a 60 ton budget in 2006.

EPA Response: Although the statute could have been drafted more clearly, EPA believes the interpretation of the Attorney General's Office is reasonable and is entitled to deference. Therefore, EPA concludes that the statute should be interpreted consistent with the letter submitted by the Attorney General's Office.

3. No further rulemaking by the AQCC was necessary to eliminate the expiration of the 60 ton budget. A contrary reading would lead to the result that the 44 ton budget would apply starting in 1998 when the legislature clearly did not want this to happen. The legislature made clear that the 44 ton reversion would only apply for purposes of state law.

EPA Response: EPA agrees with this interpretation and believes it is entitled to deference.

4. No further public hearings by the AQCC were necessary following the Colorado legislature's amendment of the budgets. In addition, no notice and hearing were required before the legislature itself. The adoption of the SIP by the AQCC in February 1995 and the amendment of the SIP by the legislature in May 1995 were steps in the process of developing a single SIP revision. Nothing in EPA's rules requires additional hearings at subsequent steps in the state review process. In addition, the legislative process is open and public and the legislators are accountable to the electorate.

EPA Response: EPA responds to these comments in Section II.C., below.

5. State statutes do not prohibit the submission of the 60 ton budget for inclusion in the SIP. Other commentors' reading of C.R.S. section 25–7-105(1)(a)(III) is not consistent with legislative intent. When the Colorado legislature said the 60 ton budget ''is included in the SIP only as required by the federal act'', the legislature meant that the budget is included in the SIP only as required in order for such emissions budget to apply for the purposes of transportation conformity. Commentors' reading would negate the 60 ton budget and result in the application of the 44 ton budget, something the legislature clearly did not intend. The argument that C.R.S. section 25–7-105.1 prohibits the inclusion of the 60 ton budget in the SIP because it is not required by the CAA or EPA regulations also fails. The specific provisions of 25-7–105(1)(a)(III), that indicate the 60 ton budget will apply for federal transportation conformity, control over the more general provisions of 25–7–105.1.

EPA Response: See EPA's response to comment II.A.2 above. In addition, EPA believes the interpretation of the Attorney General's Office is entitled to deference on this question of State law.

C. August 5, 1997 Notice: Procedural Issues. Comments on the October 3, 1996 notice of proposed rulemaking raised concerns about the process the State followed in adopting the PM10 budget. EPA sought additional comment on the question whether the State met the CAA's notice and public hearing requirements in adopting the PM10 budget. The following numbered paragraphs contain summaries of the comments received on the August 5, 1997 notice of proposed rulemaking that are related to the notice and public hearing issue. EPA's response follows the last comment summary related to this issue.

1. Hearings held by the AQCC were adequate to satisfy the CAA's notice and hearing requirements. The hearings before the AQCC and the subsequent action by the General Assembly should be viewed as a single process that led to the adoption of the PM10 budgets SIP. There was no requirement to hold additional hearings before the General Assembly. The General Assembly was well aware there were parties opposed to the adoption of the 60 tons-per-day emission budget.

2. The legislative process is open and public and the legislators are

accountable to the electorate. The General Assembly provided an opportunity for public input through a public hearing before a committee of reference and public debate on the floor of each house. Environmental groups were actively involved in the debate. In addition, the public was on notice that the PM10 budgets SIP would be subject to review by the legislature as provided by section 25–7–133(1), C.R.S. Therefore, the legislative session itself complied with the notice and hearing requirements for adoption of the SIP.

3. There was no need for the AQCC to hold a public hearing to confirm actions taken by the General Assembly.

4. The adequacy of the legislative process with regard to satisfying the public hearing requirement of section 110 of the CAA and 40 CFR 51.102 is irrelevant. The legislature, when it passed S.B. 95–110, left discretion with the AQCC to determine the appropriate budget to submit to EPA. (EPA describes and responds to this comment on this issue in Sections II. A. and B., above, and will not respond further in this section.)

5. If EPA decides that the legislature mandated the PM10 budget as submitted, the legislature did not satisfy the requirements of 40 CFR 51.102 for notice and hearing. In addition, notice and hearing granted by the AQCC did not satisfy the requirement for notice and hearing before the legislature.

EPA Response: It has been particularly difficult for EPA to reach a decision on this issue. EPA takes very seriously the CAA's notice and public hearing requirements and believes that legitimate questions have been raised regarding the process the State followed in adopting the PM10 budget SIP. On balance, however, EPA agrees with the commentors who asserted that notice and public hearing before the AQCC in February 1995 satisfied the notice and hearing requirements of the CAA and EPA's regulations.[3] Although the General Assembly reached a different result than the AQCC, relevant issues regarding the appropriate size and applicability of the PM10 budgets were aired in the hearing before the AQCC, and the budgets the General Assembly ultimately adopted appear to be a logical outgrowth of the hearing before the AQCC. As noted by one of the commentors, following the AQCC's February 1995 hearing, the AQCC could have adopted the same budgets the General Assembly ultimately adopted. Therefore, EPA concludes that the budget established in the SIP was the result of adequate notice and hearing.

In finding that notice and public hearing were adequate in this case, EPA wants to make two points. First, EPA is finding that the process the State followed satisfied the minimum requirements for notice and public hearing for purposes of Clean Air Act requirements and EPA regulations; EPA is not making a finding that the State process was ideal or should necessarily serve as a model for future actions. Second, EPA wants to make it clear that legislative amendment of AQCC rulemaking may not always satisfy the CAA's notice and hearing requirements. EPA believes the legislative action must bear some logical relationship to the notice and public hearing previously concluded before the rulemaking agency, or the notice and public hearing requirement must be satisfied by the legislature itself or by subsequent administrative action.

As a prudential matter, EPA would recommend that the State take steps to optimize public participation so that this type of issue does not arise in the future. For example, although more than one commentor suggested the General Assembly was aware of opposition to the 60 ton budget, none of the commentors indicated whether the General Assembly or relevant committees thereof actually considered the testimony and evidence presented to the AQCC; EPA believes it would be prudent to insure that they do so in the future.

EPA does not agree with those commentors who assert that the legislative action standing alone met EPA's notice and public hearing requirements. EPA's regulations are quite specific in their requirements. Among other things, 30 days prior notice is required. See 40 CFR 51.102. No commentor has suggested that the legislature or one of its committees complied with this requirement. Also, EPA does not agree with the commentor who asserts that C.R.S. section 25–7–133(1) satisfied the CAA's notice requirements, in particular since prior to the General Assembly's adoption of the PM10 budget SIP, this statute only provided for the General Assembly to accept or reject a SIP revision adopted by the AQCC, rather than alter the budget SIP as was done in this case.

Because EPA concludes that the CAA's notice and hearing requirements were met in this case, EPA agrees with the commentors who asserted there was no need for the AQCC to hold an additional hearing after the General Assembly had acted. However, it is conceivable that further notice and hearing before the AQCC would have been one way for the State to satisfy EPA's notice and public hearing requirements if the February 1995 AQCC hearing had not been sufficient for this purpose. Another way would have been for the General Assembly itself to comply with EPA's notice and hearing requirements.

Regarding one commentor's assertion that notice and hearing requirements were met because environmental groups were actively involved in the debate regarding the PM10 budgets SIP within the General Assembly, EPA was unable to substantiate this claim through any materials submitted by commentors or through independent research. However, EPA's research revealed that several other parties, including the AQCC's hearing officer for this SIP, did provide testimony before the Legislative Council and/or a committee of reference.

D. August 5, 1997 Notice: Substantive Issues. EPA received comments on its October 3, 1996 notice of proposed rulemaking that raised concerns regarding the adequacy of the emissions budgets. Based on these comments, EPA concluded that it needed additional input from commentors in order to make an informed decision. Thus, in its August 5, 1997 notice, EPA sought additional comment regarding the following two issues: (1) Whether it was appropriate for the budget SIP to include a single NO_X budget from the 1995 attainment demonstration of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day, and (2) whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years. The numbered paragraphs below contain summaries of the comments received on these issues. For each issue, EPA's response follows the last comment summary for the particular issue. EPA has noted where the comment summary includes comments on the October 3, 1996 notice.

Issue 1: Whether it was appropriate for the budget SIP to include a single NO_X budget of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day.

Comment Summaries

1. EPA's analysis of this issue in its August 5, 1997 notice was correct. The NO_X emissions budget of 119.4 tons per day is consistent with the available safety margin, and therefore need not conform to the inventory in the maintenance demonstration.

[3] These notice and public hearing requirements can be found in section 110(a)(2) of the CAA, 42 U.S.C. section 7410(a)(2), and 40 CFR 51.102.

2. The analysis of the 60 ton PM10 budget assumed NO_X emissions of 119.4 tons per day. This analysis showed that the area would continue to attain the standard with these emissions values. Thus, the maintenance year emissions of NO_X are irrelevant.

3. Under EPA's conformity rule, projections of emissions in an attainment SIP beyond the attainment year are not considered emissions budgets unless the SIP explicitly states such an intent. The SIP states no such intent.

4. EPA should consider the fact that the Denver area has not violated the PM10 standard in nearly five years and the highest recorded value in 1996 was well below the standard. Also, EPA's promulgation of a new standard for PM10 may soon render these budget and conformity issues moot.

5. Contrary to EPA's analysis in its August 5, 1997 notice, the NO_X mobile source emissions budget is based on motor vehicle emission estimates in the Denver PM10 SIP, and not a margin of safety. The AQCC did not adopt a margin of safety analysis in the SIP which is why the analysis was not submitted by the State as part of the SIP submission. The NO_X budget submitted by the State offers no basis for the rationale offered by EPA in its August 5, 1997 notice. The conformity rule provides that transportation agencies may not infer additions to budgets not explicitly intended by the SIP; the same rule must apply to EPA. The SIP must quantify the amount by which motor vehicle emissions could be higher while still allowing a demonstration of maintenance and must specifically indicate that the excess emissions are to be allocated to the MPO for transportation conformity purposes. The SIP did not meet either of these requirements. In fact, in the maintenance year there are no excess emissions to allocate. The RAQC staff's analysis, which EPA cites in its August 5, 1997 notice, does not consider emissions from all sources and does not require that emissions be distributed to all grid receptors. The maintenance demonstration approved by the AQCC and submitted as part of the PM10 SIP that EPA has approved shows that motor vehicle NO_X emissions must be no higher than 102.7 tons in order to demonstrate maintenance. The RAQC staff's analysis shows that more emissions could be added in portions of the Metro area not yet developed, but it provides no basis for concluding that more emissions can safely be added where vehicle travel is currently occurring. Since the SIP does not restrict emissions to the undeveloped portions of the Metro area, there is no basis to conclude there are excess emissions to be allocated and there is no basis to rely on the RAQC staff's analysis. Adding 17 additional tons of NO_X in the developed portions of the Metro area in the maintenance year would cause estimated concentrations to exceed the NAAQS. In addition, the RAQC staff's analysis was never officially adopted by anyone. We reiterate comments made on the October 3, 1996 proposal that EPA approve the 119.4 ton per day budget as the applicable budget only for analyses performed up to the attainment year, and that EPA clarify that the applicable budget after the attainment year is the NO_X estimate contained in the maintenance demonstration portion of the approved SIP.

This same commentor also indicated in comments on EPA's October 3, 1996 notice of proposed rulemaking that the use of a 119.4 tons per day NO_X emission budget for years after the attainment year would not be consistent with the obligation to set an emission budget consistent with the demonstration of maintenance. In those comments, the commentor cited to the preamble statement in EPA's November 24, 1993 conformity rule that, ''[i]n all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration * * *'' Because the 119.4 ton budget is not consistent with the 102.7 ton inventory in the maintenance year, the commentor argued that the appropriate NO_X budget would be 119.4 tons per day NO_X up to the attainment year, but would be 102.7 tons per day NO_X beyond the attainment year. EPA Response: In its August 5, 1997 supplemental notice, EPA proposed approval of the PM10 and NO_X budgets for Denver based in part on the safety margin analysis conducted by the RAQC. This analysis sought to demonstrate that mobile source emissions in the Denver modeling region could be as high as 221 tons per day of PM10 before violations of the NAAQS would occur. After reviewing all of the comments and carefully considering the requirements of the conformity rule and the Act, EPA has determined that it can no longer endorse the RAQC's suggested approach for defining a safety margin.

The conformity rule, as amended on August 15, 1997, defines safety margin as the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance of the relevant air quality standard. For example, many maintenance plans include maintenance year emission inventories which are lower than the attainment year inventory. The difference between these two levels of emissions could be considered a margin of safety. Some attainment SIPs are submitted with modeled attainment values which are somewhat below the standard; the difference in emissions between the SIP level and the level that would just provide for attainment of the standard could be considered a safety margin.

However, the RAQC's analysis is based on maximizing emissions in all grids in the modeling domain, and as such is more of a ''carrying capacity'' analysis. It bears no relation to the attainment or maintenance year emission inventory; emissions in all portions of the modeling domain were increased to levels equivalent to downtown Denver, including remote rural regions, even though activity levels in the remote grids in the attainment or maintenance year were not high enough to create such emissions levels. The RAQC's approach to establishing a safety margin would appear to conflict with the requirements of section 176(c)(2)(A) of the CAA.

It would have been more appropriate to calculate a safety margin for Denver by determining the difference in emissions between the modeled 1995 attainment value (147.7 ug/m3) and the standard of 150 ug/m3, by proportionally increasing the 1995 inventory used in the modeling until the standard had been reached. A safety margin calculated in this way would likely only amount to a few tons per day. However, the RAQC did not calculate its safety margin this way, and EPA has decided it cannot rely on the RAQC's analysis for purposes of this action, nor is EPA generally endorsing this approach for the establishment of safety margins in other nonattainment or maintenance areas. Thus, EPA is not relying on the RAQC's safety margin analysis to justify approval of the 119.4 tons per day NO_X budget.

In addition, EPA finds unconvincing the argument that 1998 projections of NO_X emissions would not be a budget for conformity purposes unless the SIP states explicitly states such an intent. The conformity rule is clear that approved attainment and maintenance demonstrations and any required milestone demonstrations establish budgets which must be used for conformity until superseded by subsequent approved SIPs for those same years. In this case, the PM10 SIP's 1998 maintenance demonstration was

required by section 189(c) of the CAA; i.e., it was a required milestone. EPA notes that the State did establish a 1998 PM10 budget, and that 1998 PM10 budgets have been established for other PM10 nonattainment areas within the State of Colorado. Also, EPA does not agree with the approach of establishing a budget for one precursor of PM10 for any given year, but not all of them. Since the PM10 and NO_X inventories work in tandem as part of the attainment and maintenance demonstrations in Denver, it does not make technical sense to regulate one pollutant through conformity but not the other. The conformity rule is clear that these inventories are to be treated as budgets for purposes of conformity; a state may not evade this requirement by merely declaring an intent that a required attainment, maintenance or milestone inventory for a pollutant or pollutant precursor is not to be considered a budget. The conformity rule language cited by the commentors in asserting that the 1998 NO_X budget is not to serve as a budget refers to optional projections of emissions in SIPs that are not otherwise required by the Act or EPA SIP policy. In this case, both PM10 and NO_X motor vehicle emissions inventories were required as part of the maintenance/milestone demonstration in the PM10 SIP.

However, EPA notes that the NO_X budget of 119.4 tons per day from the 1995 attainment demonstration was used in the modeling analysis which the APCD used in adopting the 60 ton PM10 budget. EPA also notes that projected NO_X emissions from the transportation plan and TIP (not to exceed the adopted budget of 119.4 tons per day) are required to be used in the dispersion modeling conducted for each conformity determination. Therefore, since the budgets and their associated dispersion modeling requirement will provide for maintenance of the NAAQS, as discussed in section II. A. 3., above, EPA is also approving the 119.4 tons per day NO_X budget for all future years. EPA views the latest submission which relied on this analysis as setting the valid budget for this period for transportation conformity purposes, which is today approved into the SIP.

Finally, as noted by one commentor, EPA promulgated a revised PM10 NAAQS on July 18, 1997. (See 62 FR 38652.) Specifically, the form of the NAAQS was revised in a way that makes the standard less stringent overall. As a result of the promulgation of the new PM10 NAAQS, EPA may in the near future revoke the old PM10 NAAQS for Denver. However, EPA has not yet decided whether conformity requirements will continue to apply to areas for which the old PM10 NAAQS has been revoked and for which no new nonattainment designation has been made. Furthermore, the old PM10 NAAQS has not yet been revoked for Denver. Therefore, the budgets are not moot, and the mere possibility that the new NAAQS may render the budgets moot is not relevant to EPA's decision to approve the budgets. Also, the fact that the area has been attaining the PM10 NAAQS, while providing an extra measure of comfort regarding the attainment and maintenance/milestone demonstrations in the PM10 SIP, does not by itself provide an adequate technical basis for EPA to approve the budgets.

Issue 2: Whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years.

Comment Summaries

1. As EPA noted in its August 5, 1997 notice, the conformity rule does not require consideration of growth in non-mobile sources each time a conformity determination is made. EPA's analysis in its August 5, 1997 notice is consistent with the application of conformity requirements in nonattainment areas throughout the country. Further, the conformity rule does not require the mobile source sector to offset projected growth in emissions from non-mobile sources.

2. No growth in non-mobile sources is expected over the next 20 years. Thus, growth in non-mobile sources is a non-issue. This commentor submitted data to support this assertion.

EPA Response: In addition to the comments received above, the preamble to EPA's August 15, 1997 amended conformity rule is relevant to this question and EPA has considered the preamble language in addressing this issue.

In conducting the modeling that led to the establishment of the 60 ton budget, APCD held all non-mobile sources (and mobile source NO_X) constant at 1995 levels. There was concern that the 60 ton budget would not provide for attainment if non-mobile source emissions were to increase in future years.

Normally, EPA would not approve a budget that had been established without considering growth in all source categories. The Act and EPA policy are clear that attainment and maintenance SIPs must consider growth in all sources in demonstrating attainment or maintenance of the NAAQS, and the conformity rule's budget test relies on the fact that SIP budgets do consider growth in all sources to ensure that transportation plans, programs and projects will not cause or contribute to violations of the NAAQS. The preamble to EPA's August 15, 1997 conformity rule establishes that growth in non-mobile sources must be considered in setting motor vehicle emission budgets for years beyond the attainment or maintenance demonstration (62 FR 43787–43788).[4]

However, in response to EPA's request for public comment, the RAQC submitted documentation indicating there will be no growth in non-mobile sources at any time in the near future. The RAQC has been working since 1995 on development of a long-range air quality plan known as the Blueprint for Clean Air for PM10 and two other pollutants. As part of this plan, long-term projections of emissions from all source categories have been developed by the RAQC and the State Air Pollution Control Division. The information submitted to the docket for this rulemaking by the RAQC demonstrates that non-mobile sources will remain below 1995 levels through at least the year 2020, and will be approximately 5 percent below 1995 levels in 2020.

Since it does not appear that there will be any growth in non-mobile sources in the Denver area over the time period for which the budgets were analyzed, EPA is approving the MVEB even though growth in these sources was not assessed for purposes of developing and adopting the MVEB.

In its August 5, 1997 supplemental notice, EPA proposed to approve the budgets in part based on a safety margin analysis prepared by the RAQC. In its analysis, EPA noted that the calculated safety margin of 221 tons per day of PM10 in 2015 was developed assuming 2015 levels of non-mobile source emissions; i.e., growth, or lack thereof, in non-mobile source emissions had been factored into the calculation of the so-called safety margin. As described above, EPA no longer believes the RAQC characterization of safety margin is consistent with the CAA or the conformity rules. Therefore, EPA is not relying on the RAQC safety margin analysis in approving the budgets.

[4] A number of commentors indicated that the conformity rule does not require consideration of growth in non-mobile sources for conformity determinations. This is accurate but should be distinguished from the initial setting of motor vehicle emission budgets in SIPs. The preamble to EPA's August 15, 1997 conformity rule is clear that growth in non-mobile sources must be considered in setting ''out-year'' budgets. 62 FR 43787–43788.

III. Final Action

EPA is approving the Denver PM10 and NO_X mobile source emissions budget SIP revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996 respectively as revisions to the Colorado SIP. The revisions were submitted in order that they could be used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for applicable periods prescribed under conformity requirements within the Denver PM10 nonattainment area.

The current and future year mobile source emissions budgets that comprise part of these SIP revisions are as follows:

PM10: 54 tons per day, for analysis years 1998–2005
60 tons per day, for analysis years 2006 and beyond
NO_X: 119.4 tons per day, for analysis years 1998 and beyond

These budgets are applicable to the PM10 SIP modeling domain.

For these pollutants, these budgets supersede any prior budgets for the Denver PM10 nonattainment area for the same time frames. The metropolitan planning organization for the Denver PM10 nonattainment area will have to demonstrate conformity to these budgets within 18 months of EPA's approval of these budget SIPs, in accordance with 40 CFR 93.104(e)(3).

It should be noted that, in addition to the budgets themselves, the SIP revisions that EPA is approving today contain other provisions that must be followed in making transportation conformity determinations within the Denver PM10 nonattainment area. These provisions include, but are not necessarily limited to, descriptions of relevant inventory categories, definitions of applicability, and requirements related to dispersion modeling.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 June 1, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 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 52.320 is amended by adding paragraphs (c)(84) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(84) The Governor of Colorado submitted the Denver PM10 mobile source emissions budget State Implementation Plan (SIP) with a letter dated July 18, 1995. The Governor submitted the Denver NO_X mobile source emissions budget State Implementation Plan (SIP) with a letter dated April 22, 1996. The PM10 and NO_X mobile source emissions budgets and other provisions in these SIP

submittals are used to assess conformity of transportation plans, transportation improvement programs, and transportation projects.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, ''Ambient Air Quality Standards'' regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) PM10, Sections A.2. and A.3., and Sections B and C, adopted on February 16, 1995, effective April 30, 1995, as amended by the Colorado General Assembly through enactment of Colorado Senate Bill 95–110, which Bill was enacted on May 5, 1995 and signed by the Governor of Colorado on May 31, 1995. (See paragraph (c)(84)(i)(B) of this section).

(B) Colo. Rev. Stat. section 25–7–105(1)(a)(III), enacted by the Colorado General Assembly on May 5, 1995 as part of Colorado Senate Bill 95–110 and signed by the Governor of Colorado on May 31, 1995.

(C) Colorado Air Quality Control Commission ''Ambient Air Quality Standards'' regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) Nitrogen Oxides, as adopted June 15, 1995, effective August 30, 1995.

[FR Doc. 98–8214 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 059–0011; FRL–5988–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on February 9, 1998. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of particulate matter (PM) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control PM emissions from residential wood combustion. Thus, EPA is finalizing simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue, #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the Arizona SIP are Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 31, 1995.

II. Background

On February 9, 1998 in 63 FR 6505, EPA proposed granting limited approval and limited disapproval into the Arizona SIP of the following rules: Maricopa Rule 318 and the Woodburning Ordiance. Rule 318 and the Woodburning Ordinance were adopted by Maricopa Environmental Services Department on October 5, 1994. These rules were adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM–10 and in response to CAA requirements. A detailed discussion of the background for the rules and the nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the submitted rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. EPA is also finalizing the limited disapproval requiring the correction of the following rule deficiencies: inappropriate discretion by the Control Officer (Director's discretion) in the approval of woodburning devices and reference of non-EPA-approved woodburning device certification procedures. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the technical support document (TSD) available at EPA's Region IX office (TSD dated January 1998).

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 6505. EPA received comment letters on the PR from two parties: ADEQ and the Hearth Products Association (HPA). The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment

ADEQ comments that the reference in Rule 318 to non-EPA-approved certification procedures for woodburning devices is necessary because EPA's wood heater standards found in 40 CFR Part 60 Subpart AAA do not apply to fireplaces and other woodburning technologies found in Maricopa County. ADEQ believes that EPA cannot disapprove the use of non-EPA procedures when EPA has neither developed federal certification procedures nor approved locally-developed certification procedures for clean woodburning technologies that are not addressed in Subpart AAA. ADEQ states that EPA needs to approve the certification methodology so that air pollution agencies can continue to address woodsmoke emissions from devices not subject to EPA certification.