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, Ozone, Reporting and recordkeeping requirements.

Dated: July 22, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

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. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(122), (123), and (124) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(122) Revisions to the Maryland State Implementation Plan submitted on July 17, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 17, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Addition of new COMAR 26.11.01.01B(20-I) and new COMAR 26.11.24.01B(9–I), definition of the term ''motor vehicle,'' adopted by the Secretary of the Environment on April 7, 1995, and effective on May 8, 1995.

(ii) Additional material.

(A) Remainder of July 17, 1995 Maryland State submittal pertaining to COMAR 26.11.01.01B(20-I) and COMAR 26.11.24.01B(9-I), definition of the term ''motor vehicle.''

(123) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Deletion of old COMAR 26.11.19.09 Volatile Organic Compound Metal Cleaning (entire regulation).

(C) Addition of new COMAR 26.11.19.09 Control of VOC Emissions from Cold and Vapor Degreasing, adopted by the Secretary of the Environment on May 12, 1995, and effective on June 5, 1995, including the following:

(*1*) Addition of new COMAR 26.11.19.09.A Definitions.

(*2*) Addition of new COMAR 26.11.19.09.B Terms Defined, including definitions for the terms ''cold degreasing,'' ''degreasing material,'' ''grease,'' ''halogenated substance,'' ''vapor degreasing,'' and ''VOC degreasing material.''

(*3*) Addition of new COMAR 26.11.19.09.C Applicability.

(*4*) Addition of new COMAR 26.11.19.09.D Requirements.

(*5*) Addition of new COMAR 26.11.19.09.E Specifications for Cold Degreasing and Requirements for Vapor Degreasing.

(*6*) Addition of new COMAR 26.11.19.09.F. Records.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.09 Control of VOC Emissions from Cold and Vapor Degreasing.

(124) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Addition of new COMAR 26.11.19.23 Control of VOC Emissions from Vehicle Refinishing, adopted by the Secretary of the Environment on May 1, 1995, and effective on May 22, 1995, including the following:

(*1*) Addition of new COMAR 26.11.19.23A Definitions, including definitions for the terms ''base coat/clear coat system,'' ''controlled air spray system,'' ''mobile equipment,'' ''multistage coating equipment,'' ''precoat,'' ''pretreatment,'' ''primer sealer,'' ''primer surfacer,'' ''specialty coating,'' ''topcoat,'' and ''vehicle refinishing.''

(*2*) Addition of new COMAR 26.11.19.23B. Applicability and Exemptions.

(*3*) Addition of new COMAR 26.11.19.23C. Coating Standards and General Conditions.

(*4*) Addition of new COMAR 26.11.19.23D. Calculations.

(*5*) Addition of new COMAR 26.11.19.23E. Requirements for Specialty Coatings.

(*6*) Addition of new COMAR 26.11.19.23F. Coating Application Equipment Requirements.

(*7*) Addition of new COMAR 26.11.19.23G. Cleanup and Surface Preparation Requirements

(*8*) Addition of new COMAR 26.11.19.23H. Monitoring and Records.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.23 Vehicle Refinishing.

[FR Doc. 97–20471 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 69–0012; FRL–5867–9]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part the final *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* (May 1997) (microscale plan) submitted by the Arizona Department of Environmental Quality on May 7, 1997. The microscale plan evaluates attainment of the 24-hour particulate matter (PM–10) national ambient air quality standard at four monitoring locations in the Maricopa County (Phoenix), Arizona, PM–10 nonattainment area. EPA is approving the attainment and reasonable further progress demonstrations for two of these sites (Salt River and Maryvale) and disapproving them for two other sites (West Chandler and Gilbert). EPA is also approving the reasonably available control measure/best available control measure demonstrations in the microscale plan for some significant source categories of PM–10 but disapproving them for others.

EFFECTIVE DATE: September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning

(AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Portions of Maricopa County are designated nonattainment for the PM–10 national ambient air quality standards (NAAQS)[1] and were originally classified as ''moderate'' pursuant to section 188(a) of the Clean Air Act (CAA or Act). 56 FR 11101 (March 15, 1991). The State of Arizona developed and submitted to EPA a PM–10 State Implementation Plan (SIP) revision intended to address the CAA requirements for moderate PM–10 nonattainment areas. These moderate area requirements are described in the notice of proposed rulemaking for this action (henceforth ''the proposal''). 62 FR 31026 (June 6, 1997). EPA approved this SIP revision on April 10, 1995. 59 FR 38402. This approval was subsequently vacated by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996). In vacating EPA's approval of the plan, the court found that the State had failed to address the 24-hour PM–10 standard in its moderate area plan and ordered EPA to require the State to submit moderate area reasonably available control measure (RACM), attainment and reasonable further progress (RFP) demonstrations for that standard. 84 F.d. at 311.

Just before the court issued its order, EPA found that the Maricopa area failed to attain the PM–10 standards by the statutory deadline for moderate areas of December 31, 1994. See 61 FR 21372 (May 10, 1996). As a result, the area was reclassified to ''serious.'' The State is now required to develop and submit a new PM–10 plan meeting the CAA requirements for serious PM–10 nonattainment areas by December 10, 1997. Statutory requirements for serious area PM–10 requirements are described in the proposal at 62 FR 31026–31027.

In order to comply with the court's order without diverting resources from the serious area plan effort, EPA, in consultation with the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Environmental Services Department (MCESD), decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan, but would split that planning effort into two related parts. Accordingly, EPA required submittal of a limited, locally-targeted plan (known as the microscale plan) meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the court and the serious area planning requirements for both standards.

The submittal deadlines and requirements applicable to the microscale plan are contained in letters dated September 18, 1996 and March 5, 1997 from Felicia Marcus, Regional Administrator, EPA Region IX, to Russell Rhoades, Director, ADEQ (Marcus letter). In brief, the microscale plan was to address the 24-hour standard violations at five specific monitors in the metropolitan Phoenix area and meet the statutory RACM, best available control measures (BACM), attainment, and RFP requirements for moderate and serious PM–10 areas. Finally, the plan was to contain the air quality modeling and emissions inventory information necessary to support the required demonstrations and meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l); necessary assurances that the implementing agencies have adequate personnel, funding and authority required by CAA section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111. A complete discussion of the EPA's rationale and requirements for the microscale plan can be found in the proposal at 62 FR 31027–31029.

II. Summary of the Proposal

ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) (plan or microscale plan) to EPA on May 9, 1997. EPA proposed to approve in part and disapprove in part this plan on June 6, 1997 (62 FR 31025). EPA's evaluation of the microscale plan and its proposed action on that plan are summarized here; a complete discussion can be found in the proposal and in the technical support document (TSD) for this rulemaking.

The microscale plan addresses exceedances of the 24-hour PM–10 NAAQS at the Salt River, Maryvale, Gilbert, and West Chandler PM–10 monitoring sites in the metropolitan Phoenix area.[2] The plan showed that 24-hour exceedances at the Salt River site were primarily due to fugitive dust from earth moving, industrial haul roads, unpaved parking lots, and unpaved roads; at the Maryvale site, from disturbed cleared area; at the Gilbert site from agricultural field aprons and unpaved parking lots; and at the West Chandler site, from agricultural fields, agricultural field aprons, vacant lots, and disturbed cleared areas. Plan, pp. 17–19 and 62 FR 31031–31032. The plan addressed attainment at these localized sites by identifying RACM and BACM appropriate for controlling these types of fugitive dust sources. However, the localized nature of the microscale plan precluded a determination regarding the extent to which the identified RACM and BACM should be implemented to address emissions over a larger geographic area, as well as an assessment of the overall effectiveness of these measures when applied throughout the nonattainment area as a whole. These determinations will be addressed by the State in the full regional plan. Plan, pp. 21–22 and 62 FR 31031–31032.

In Maricopa County, most fugitive dust sources are subject to MCESD's Rule 310 (Open Sources of Fugitive Dust). MCESD committed in the microscale plan to a number of improvements to the implementation of Rule 310. These improvements are described in the plan (pp. 32–36) and discussed in EPA's proposed action on the plan, 62 FR 31032–31034. These improvements were primarily targeted at sources subject to permitting (such as, earth moving, disturbed cleared roads, and industrial haul roads) under MCESD's rules. For non-permitted sources (such as vacant lots, agricultural sources, unpaved parking lots, and unpaved roads), the microscale plan did not provide for proactive implementation of controls. 62 FR 31034. In total, the plan contained sufficient controls to show attainment at the Salt River and Maryvale sites but also showed that additional controls were needed before attainment could be demonstrated at the West Chandler and Gilbert sites. Plan, pp. 37–40 and 62 FR 31025.

Based on its evaluation of the microscale plan, EPA proposed to approve the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving,

[1] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6.

[2] The fifth monitoring site, East Chandler, was dropped from the microscale plan because of a lack of sufficient inventory data to evaluate exceedances at that site. 62 FR 31029, ftn 10.

and industrial haul roads and disapprove the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads. EPA also proposed to approve the attainment and RFP demonstrations at the Salt River and Maryvale sites and disapprove these demonstrations at the West Chandler and Gilbert sites. Finally, EPA proposed to find that the plan met the the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l); necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111. 62 FR 31035–31036.

III. Response to Public Comments on the Proposal

EPA received comments on its proposal from the Arizona Center for Law in the Public Interest (ACLPI) and the Arizona Department of Environmental Quality. A summary of the most pertinent comments and EPA's responses to those comments follow. A complete summary of all the comments received and EPA's responses to those comments can be found in the TSD.

In its June 9, 1997 comment letter, ACLPI incorporated by reference its April 28, 1997 comments to ADEQ. EPA responds to both sets of comments below.

Comment: While ACLPI agrees with EPA's proposal to approve the various control measures in the microscale plan for inclusion in the SIP, it does not agree that these measures have been shown to constitute BACM for all the source categories addressed and notes that the State indicated in the draft microscale plan that an evaluation of BACM was being deferred to the full serious plan. ACLPI asserts that the final microscale plan does not contain a complete BACM analysis meeting all the requirements of EPA's PM–10 serious area guidance [3] nor does the plan contain any explanation of why measures were rejected.

Response: EPA's findings regarding the States' compliance with the RACM and BACM requirements in the context of the microscale plan recognize that this plan is limited in nature and, thus, is only a part of—is in essence a down payment on—the full serious area PM–10 plan contemplated by section 189(b) of the Act and relevant Agency guidance. Consequently, EPA agrees that these measures have not been shown to constitute complete BACM for the eight significant source categories in the microscale plan and that the plan does not contain a complete BACM analysis meeting the requirements of the *Addendum*. EPA acknowledged the limited nature of these determinations when it stated, in its proposed action on the microscale plan, that the proposed findings on RACM and BACM implementation are ''applicable only to the microscale plan and thus * * * will not constitute EPA's final decision as to the State's full compliance with CAA section 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM for the eight source categories.'' 62 FR 31035. EPA further stated in its proposal, ''[t]he subject of this proposed action is the microscale plan only; the full regional plan is not due until late 1997[; therefore,] it is * * * premature to determine if the microscale plan, in and of itself, fully complies with the Clean Air Act requirements for moderate and serious PM–10 nonattainment areas.'' 62 FR 31036. The proposal goes on to conclude that the State ''will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan.'' 62 FR 31035.

The *Addendum* defines BACM, among other things, as the maximum degree of emission reduction achievable, considering energy, economic and environmental impacts and outlines a multi-step process for identifying BACM. *Addendum* at 42010–42014. The steps are (1) development of a detailed emission inventory of PM-10 sources and source categories, (2) air quality modeling evaluating the impact on PM–10 concentrations of the various sources and source categories to determine which are significant, and (3) identifying potential BACM controls for significant source categories including their technological feasibility, costs, and energy and environmental impacts.

Although detailed information was developed in the microscale plan regarding factors such as the number and type of emissions sources and their emissions, this information was gathered only for the limited geographic area around the monitors addressed by the microscale plan. However, EPA and the State agreed that any identified BACM controls resulting from the microscale plan would be implemented regionally, that is, throughout the entire nonattainment area. Marcus letter. As a technological and planning matter, it is more logical to address the third step of the BACM analysis (as outlined in the *Addendum*) by assessing the effects of control implementation on the regional scale rather than the localized one considered by the microscale plan.[4] In other words, while significant sources of PM–10 and candidate BACM for those sources could be identified within the scope of the microscale plan, the final determination about whether such controls represent the maximum degree of emission reductions achievable given economic, energy and environmental considerations depends on the type of information being developed for the regional plan due in December.[5] Therefore, it is reasonable for the State to undertake the full BACM analysis in the context of the regional plan and for EPA to defer its assessment of the State's compliance with the requirements accordingly.

This is not to say that some parts of the BACM analysis were not appropriate for the microscale plan. In fact, the State performed the BACM analysis required by the *Addendum* except for the final detailed evaluation of economic, energy, and environmental considerations to determine if the measures represented the maximum degree of control. It developed an emission inventory around each monitor and evaluated the impact of each source category on ambient concentrations. It also identified candidate BACM controls for most significant source categories (Plan, Appendix B, pp. 4–8—4–9) by reviewing EPA's fugitive dust guidance documents and PM–10 controls programs in other areas including the South Coast (Los Angeles) Air Quality Management District and the Coachella Valley (Palm Springs), California. Plan, Appendix B, p. 3–1. Based on the documentation of this effort in the

[3] This guidance is referred to as the *Addendum* and is found in ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994)

[4] Regional implementation assured that the air quality benefits associated with the controls identified at a microscale site were realized over the much larger nonattainment area and not just narrowly at the particular microscale site. The regional implementation approach was taken because EPA believed that these regional air quality benefits would outweigh any benefits that would have accrued from a full BACM analysis resulting in implementation of controls at the microscale sites alone. The Agency believes that this preferable approach warrants the brief six month deferment of the full BACM analysis to the full regional plan.

[5] An example will illustrate the importance of this regional information in determining BACM: the microscale plan may have shown that it is economically feasible to pave all unpaved roads within a small microscale domain, but a regional analysis may very well show that it is economically infeasible to do so within the almost 2,900 square miles of the Maricopa County PM–10 nonattainment area.

microscale plan, EPA has determined, given the inherent limitations of the microscale approach, that the plan's BACM analysis is consistent where relevant with the guidance in the *Addendum*. 62 FR 31031–31032.

Comment: ACLPI disagrees with EPA's assertions that some of the dust control strategies in the microscale plan constitute BACM because they represent an improvement over existing RACM. ACLPI argues that a control measure is not BACM merely because it is more effective than an existing measure or merely because it emphasizes prevention; rather BACM is the maximum degree of emission reduction achievable, considering energy, economic and environmental impacts.

Response: As discussed immediately above, a full BACM analysis as contemplated by the *Addendum* was not possible, for the limited purposes of the microscale plan, in the microscale plan; therefore, it was not possible to determine if any particular candidate BACM represented the ''maximum degree of emission reduction achievable, considering energy, economic and environmental impacts.'' The *Addendum*, however, recognizes that the source categories for PM–10 are varied and, consequently, does not limit its description of BACM to this definition. In the *Addendum*, BACM can ''include, though it is not limited to, expanded use of some of the same types of control measures as those included as RACM in the moderate area SIP.'' *Addendum* at 42013. This is necessarily the case because the universe of control measures available to States to address certain PM–10 sources, such as fugitive dust, is limited. The technical guidance on control of fugitive dust sources [6] makes this point: ''When a fugitive dust source has been controlled under a RACM strategy, the implementation of BACM will generally involve additive measures that consist of a more extensive application of fugitive dust control measures imposed under RACM.'' Fugitive Dust BACM TID, p. 1–6.

EPA also states in the *Addendum* a preference that BACM include pollution preventive measures and measures that provide for long-term sustained progress toward attainment rather than quick, temporary controls. *Addendum* at 42013. With respect to this criterion, EPA's fugitive dust guidance states: ''The reduction of source extent and the incorporation of process modifications or adjusted work practices which reduce the amount of exposed dust-producing material constitute preventive [best available control] measures for control of fugitive dust emissions.'' Fugitive Dust BACM TID, p. 1–6.

Given that both the *Addendum* and the Fugitive Dust BACM TID provide that adoption of control measures that go beyond or expand the use of adopted RACM and that emphasize prevention constitute BACM for fugitive dust sources especially, it is appropriate for EPA to assess the BACM analysis in the microscale plan in terms of these criteria, as well as to conclude that the microscale plan's BACM demonstration, within the narrow scope of that plan, is acceptable. These criteria are discussed in greater detail in the proposal and TSD (62 FR 31029 and TSD, p. 21) and are, as noted, fully consistent with the *Addendum*. Finally, EPA notes that, given the limited set of measures available for control of PM–10 fugitive dust sources, the BACM selected for implementation after the complete BACM analysis required by the *Addendum* is performed for the regional plan may be the same as those identified in the microscale plan.

Comment: ACLPI asserts that EPA must disapprove the BACM demonstration for all source categories in the microscale plan, not just the five that EPA proposed and that such a disapproval would not impose any severe or unexpected burdens on the State since the State is already planning to do a full BACM analysis after submission of the microscale plan. ACLPI asserts that EPA's approval of the state's ''thin or nonexistent'' analysis as a BACM demonstration would create a serious risk of weakening the entire particulate matter program because other states may well cite EPA's action here as evidence of what constitutes BACM for these sources when in fact there are much more effective measures in practice.

Response: EPA has found that the microscale plan contains adequate BACM demonstrations for three source categories and inadequate BACM demonstrations for five categories and has fully documented its determinations in the proposal and supporting TSD. 62 FR 31031–31035 and TSD, pp. 24–34. EPA based its determination on Clean Air Act requirements, the *Addendum*, the requirements for the microscale plan laid out in the Marcus letters, the inherent limitations of the microscale approach, and the information presented in the microscale plan.

ACLPI's concern about risking the entire particulate matter program because other states may cite to this action is unfounded. First, EPA has made it clear that its findings are limited to the microscale plan and that ''the State will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan.'' 62 FR 31035. Second, as noted by ACLPI in its comments, the final determination of BACM is based, per EPA guidance, on a showing that a selected control is the ''maximum degree of emission reduction achievable, considering energy, economic and environmental impacts.'' *Addendum* at 42010. Since determining BACM for significant source categories like those in the microscale plan is necessarily based on area-specific information regarding energy, economics, and environmental impacts, each serious PM–10 area must perform its own BACM analysis. While other areas may review the microscale plan to identify candidate BACM measures, they cannot assume that something is or is not BACM simply because it has been determined to be so in the microscale plan.

Comment: ACLPI comments that the plan does not clearly identify which control strategies will be required in a given situation, noting that Rule 310 and the dust control plan form list various control options, some of which may constitute BACM but there is no assurance that the BACM option will be chosen by the source in any given situation. On the same theme, ACLPI notes that while the attainment demonstration at the Salt River site assumed watering to the depth of the cut, the plan does not clearly require this strategy in every situation. ACLPI asserts that EPA should condition its approval of the attainment demonstration at the Salt River site on the County providing a clear commitment to requiring this strategy.

Response: While the dust control plan checklist covers a broad range of dust generating activities, it narrowly limits the control options available for any particular activity. For example, the BACM identified in the microscale plan for disturbed cleared areas is stabilization of the surface at all times including weekends.[7] This BACM is reflected on the checklist in the category ''temporary stabilization'' which requires stabilization of disturbed cleared areas (including weekends and

[6] ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992 (Fugitive Dust BACM TID). This document is one of several guidance documents that EPA was required to develop on RACM and BACM for certain PM–10 source categories pursuant to CAA section 190.

[7] The modeling analysis indicated that the needed control was stabilization or crusting of disturbed surface areas at all times including weekends. The analysis did not depend on a particular control technique for achieving this stabilization. Plan, p. 27.

holidays) using one of two equivalent control techniques—water to form a crust or application of chemical stabilizers to form a crust.[8], [9] Plan, p. 34.

For the Salt River site, ACLPI's comment illustrates the importance of regional evaluation in the final determination of BACM. While wetting to the depth of the cut was appropriate for the cutting operation at the Salt River site, it may not always be appropriate at cutting operations elsewhere in the nonattainment area. For example, soil types vary throughout the Maricopa area and in some places a coleche layer or patch may be present. A coleche layer is impermeable to water and thus watering to the depth of the cut is not feasible when a coleche layer is encountered during cutting operations. Plan, Appendix G, p. 2. Since dust control is still needed where water to the depth of the cut is impracticable, the provision of a second equivalent control option—in this case, watering as necessary to prevent or minimize visible emissions—is reasonable and necessary. Since the checklist already requires application of at least one of these two options, EPA does not believe that it need condition its approval of the attainment demonstration at the Salt River monitor on the County providing a clear commitment to require watering to the depth of the cut in every situation.

Comment: Stating that the Clean Air Act requires that the SIP assure adequate resources for enforcement and that the attainment demonstrations in the microscale plan depend on adequate enforcement of Rule 310, ACLPI asserts that the County continues to operate this program with ''grossly'' inadequate staffing levels. ACLPI notes that the plan indicates that the County is dedicating only 1.75 FTEs to the dust control program and asserts that other county inspectors are ''available'' to perform field observations and respond to complaints, but apparently only when their other duties allow and that the County does not quantify or even estimate how much time these other inspectors will spend on Rule 310 enforcement. ACLPI asserts that, because there is no commitment to assign any specified level of staffing from this group, EPA must assume for SIP purposes that it will be zero.

Response: The microscale plan does not indicate that the County is dedicating only 1.75 FTE to implementing Rule 310. The plan clearly indicates that 1.75 FTE is the number of staff that are assigned full time to Rule 310 implementation and that there are a number of other personnel who work on Rule 310 implementation as part of their responsibilities and as needed. These other personnel include the public involvement coordinator, the small business assistance program, and 19 other inspectors, aides, engineers and supervisors.[10] Plan, Appendix E, Letter, Joy Bell, MCESD, to Joe Gibbs, ADEQ, May 6, 1997 (Bell letter).[11] It should also be noted that the County's commitment to use these other resources to implement Rule 310 is not ''when available'' as ACLPI asserts but ''as needed.'' Plan, Appendix E, Bell letter. The Cities are also contributing resources to improving implementation of Rule 310 through the regional coordination effort. Plan, Appendix E, ''Resolutions Adopted by Various Cities and Towns within Maricopa County'' (city resolutions).

EPA does not believe that it must be assumed for SIP purposes that the resources from these other inspectors must be zero simply because the County did not quantify or even estimate how much time these other inspectors will spend on Rule 310 enforcement. Inspectors inspect facilities, and most facilities have multiple, distinct emission points. Each point is potentially subject to a different rule or regulation. Because of this, inspectors are trained to be able to inspect facilities for compliance with a number of rules.[12] Because an inspector may do inspections for compliance with multiple rules on a single site visit, it is difficult, if not impossible, to tease out just how much time is or will be spent inspecting for compliance with a particular rule. Thus, the lack of a specific numerical FTE commitment to Rule 310 implementation for the 19 inspectors, aides, engineers, and supervisors does not bar considering their availability in determining if the plan provides for adequate resources.[13]

Most importantly, MCESD's commitments to improving Rule 310 implementation go well beyond just adding staff. The commitments include upgrading the Rule's implementation guidelines, educating the regulated community about its responsibilities under the Rule, revising its inspection procedures, providing a small business assistance program, and coordinating with the Cities and towns of Maricopa County. To judge the adequacy of the resources to carry out the microscale plan's control strategy, EPA evaluated this entire set of commitments as well as the information contained in the plan about the nature and extent of sources contributing to the 24-hour PM–10 standard exceedances and the controls needed to eliminate these exceedances. This evaluation (which is discussed extensively in the proposal and the TSD) led EPA to two conclusions: One, that the microscale plan provided the necessary assurances that adequate resources are available to implement Rule 310 for permitted sources, and two, that the plan did not provide the required assurances that controls will be implemented by Maricopa County on non-permitted sources. As a result of these conclusions, EPA is approving the RACM/BACM demonstration for permitted source categories and disapproving the demonstrations for the non-permitted source categories.

Comment: In its April 28, 1997 comments ACLPI notes that in addition to inspecting 1,200 to 1,600 new permittees every year, these inspectors must respond to complaints and monitor compliance by previously permitted facilities and that it seems impossible that the County will be able to inspect each new permittee once per year unless the inspectors neglect other facilities. ACLPI notes further that once per year inspection is grossly inadequate in many cases—particularly where a source has a chronic problem

[8] The equivalency of these two measures is shown in Table 4–1 (Plan, p. 22) in the microscale plan which gives the control efficiency of chemical stabilization at 82–97 percent and that of watering to maintain a crust at 90 percent.

[9] This limitation on control options is also true for the other two source categories for which EPA is approving the RACM/BACM demonstration: industrial haul roads (3 options, stabilize with gravel, dust suppressant or water) and earthmoving (2 options, water to the depth of the cut or water to eliminate or minimize visible emissions). Plan, p. 34.

[10] These inspectors are the ones who inspect stationary sources that may have Rule 310 sources, such as earth moving, located on them (like many of the stationary sources surrounding the Salt River monitor) and respond to complaints. Letter, Joy A. Bell, MCESD, to Frances Wicher, EPA, July 2, 1997 (July 2 Bell letter).

[11] The Maricopa County Board of Supervisors adopted on May 14, 1997 a resolution committing to implement improvements to the administration of the fugitive dust control program and to foster interagency cooperation to address fugitive dust. The microscale plan included the draft resolution, and ADEQ transmitted the adopted resolution to EPA on May 27, 1997. See letter from Nancy Wrona, ADEQ, to John Kennedy, EPA.

[12] EPA considers an on-site visit to a facility an inspection only if it meets EPA's Level II inspection requirements. In short, Level II inspections require an assessment of the compliance status of all units within a source that are subject to SIP, New Source Performance Standards, or National Emission Standards for Hazardous Air Pollutant regulation. ''Revised Compliance Monitoring Strategy,'' March 1991, (Revised CMS) p. 3.

[13] EPA again notes that the MCESD committed to use these inspection resources as needed to implement Rule 310. The County also committed to revising its standard operating procedures for stationary source inspections to include Rule 310 compliance checks. Plan, Appendix E, Bell letter.

and requires repeated visits. Finally, ACLPI states that the County does not explain how it expects to identify unpermitted sources that fail to self-report.

Response: MCESD has committed to inspecting all sites of 10 acres and larger (Plan, Appendix E, Bell letter) and targets smaller sources based on past history of the contractor and/or developer and field observations. Plan, p. 12. Resources in the plan are adequate for this level of inspection as committed to by MCESD. Between June 1, 1996 and May 31, 1997, the County inspected 43 percent of sources 10 acres or greater. July 2 Bell letter. This was the inspection rate with only 0.75 FTE dedicated to the program. With the additional FTE allocated to the program, the County should easily meet its commitment. Plan, Appendix E, Bell letter. The County is upgrading and integrating its database to be better able to identify problem sources. Plan, Appendix E, Bell letter. In addition, the cooperative program with Cities that includes better training of City inspectors on Rule 310 requirements should also help identify and target problem sources. Plan, Appendix E, city resolutions.

Focusing resources on and targeting annual inspections to larger sources (with their inherent ability to be more polluting) are consistent with EPA's inspection guidance which calls for inspecting large sources annually but does not specify an inspection frequency for smaller sources.[14]

The County addressed its method for identifying unpermitted sources in the microscale plan and agreed to provide an annual summary of notices of violations and citations for failure to obtain earthmoving permits. Plan, Appendix G, p. 18.

Comment: In its April 28, 1997 comments, ACLPI enclosed excerpts of EPA's July, 1992 audit of the County's Air Quality Program. ACLPI states that among other things, the audit found that the County failed to inspect many facilities on an annual basis, that enforcement and penalties were grossly inadequate, and that there was no program to identify unpermitted facilities. ACLPI also enclosed a copy of the 1996 internal County Audit finding that the Air Pollution program was seriously understaffed, and that the County had no process in place to verify the accuracy of emissions survey information submitted by sources. ACLPI asserts that in light of these findings, the County cannot adequately expand Rule 310 enforcement by adding just one FTE.

Response: The County has made a number of changes to its program to address EPA's and the County auditor's findings. As noted in the microscale plan, MCESD has added five inspectors since January, 1996 (Plan, Appendix G, p. 26) and has moved to improve its database tracking systems to address problems in verifying the accuracy of emission survey information submitted by sources. (See, in general, *Memorandum*, Al Brown, Director, MCESD, to Ross Tate, Lead Auditor, Internal Audit Department, ''Maricopa County Environmental Services Department's Response to the June 1996 Performance Audit,'' July 12, 1996, reproduced in the Plan, Appendix G). EPA evaluated MCESD's enforcement policy for the proposal and found that it is adequate to meet the requirements of 40 CFR 51.111(a) and CAA section 110(a)(2)(C). 62 FR 31036.

Comment: ACLPI also takes issue with EPA's assertion that the state need not control source categories that contribute less than 5 μg/m^3 to a location of expected 24-hour exceedance. ACLPI claims that there is absolutely no authority in the Act for EPA to exempt such sources and that such an exemption is contrary to the Act's emphasis on timely attainment and protection of health. Control of a source category contributing 5 μg/m^3, could make a difference between attainment and nonattainment. ACLPI gives, as an example of its position, a site with ambient 24-hour levels in the 155 to 158 μg/m^3 range and states that with a 80 percent control effectiveness of a source category contributing 5 μg/m^3, the site would become attainment. Based on this example, ACLPI concludes that it is wholly irrational for EPA to assert that such a source category is invariably de minimis. Further, ACLPI asserts that since PM–10 is a nonthreshold pollutant and thus adverse health effects increase on a linear scale with increased concentration, any reductions in PM–10 levels will have direct public health benefits.

ACLPI claims that EPA does not explain where the de minimis principle comes into play in its proposed approval of the microscale plan and asks EPA to provide such an explanation in response to its comments.

Response: Contrary to what the comment implies, EPA has not taken the position in this rulemaking—nor does the Agency's PM–10 serious area guidance take the position—that the State need not control insignificant source categories if such controls are needed for attainment. Rather, EPA's position is that the level of control on such insignificant sources need only be at the level required to demonstrate reasonable further progress and expeditious attainment. *Addendum* at 42011. This level may not be at RACM, or if applicable, BACM levels. In other words, the de minimis policy is invoked only for determining which source categories need RACM and/or BACM and not for determining which source categories need controls for attainment. For serious PM–10 nonattainment areas such as the Maricopa County area, the CAA requires the plan to include not only BACM but also a demonstration of attainment by the statutory deadline or the most expeditious alternative deadline practicable. Sections 189(b)(2) and 189(b)(1)(A). EPA's de minimis exemption for BACM does not interfere with this latter requirement for expeditious attainment and thus does not defeat the Act's requirement for timely attainment and protection of health.

ACLPI's example is somewhat puzzling because it appears to assume that the 155 to 158 μg/m^3 level is made up of 30 plus source categories each contributing no more than 5 μg/m^3 (31 sources each contributing 5 μg/m^3=155 μg/m^3). This case is very unlikely; what is more likely is that there would be one or more significant source categories in addition to a number of insignificant ones that make up the 155–158 μg/m^3 level. Adequate controls on these significant sources would reduce ambient concentrations below the standard. Even if this were not the case, a state still is required to demonstrate attainment and thus would need to control at least some of the de minimis sources.

EPA did provide a thorough explanation of how the de minimis principle affected its proposed action on the microscale plan. First, EPA fully discusses its de minimis policy and the rationale and legal authority for that policy in the *Addendum* at 42011. This policy states that BACM are required for all categories of sources in serious areas unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM–10 NAAQS and that a source category will be presumed to contribute significantly to a violation of the 24-hour NAAQS if its PM–10 impact at the location of the expected violations would exceed 5 μg/m^3. EPA referenced

[14] ''Revised Compliance Monitoring Strategy,'' March 1991, Appendix 5. In California, most air pollution control districts inspect all their minor sources at least once every two (e.g., Ventura County) to four years (South Coast). See FY 1995–97 Compliance Operating Plans.

this discussion in the proposal in the section describing the requirement for BACM. 62 FR 31028. Secondly, EPA proposed, solely for the purposes of evaluating the microscale plan, to use the 5 μg/m^3 action level to determine which source categories required RACM. 62 FR 31027.

The State generated tables that listed each contributing source category at each monitor and that source's ambient impact at the monitor and at the point of maximum concentration. Plan, Tables 3–2 to 3–5, pp. 17–19 and Appendix A, Tables 5–2 to 5–7 pp. 5–4—5–9 and Table 7–3, p. 7–20. Based on the State's documentation, EPA determined and thoroughly documented which source categories were significant and thus required the application of RACM and BACM. 62 FR 31031 and TSD at pp. 24–27. Except for some source categories at the Salt River monitor (TSD, p. 25), EPA did not also list the insignificant sources at each monitor since this information can be easily determined from the cited tables in the microscale plan and in the TSD (Tables II–3 through II–6, pp. 15–18). EPA has revised the TSD to specifically state which source categories EPA found insignificant. These following source categories were found to be insignificant: for the Salt River monitor, industrial yards, surface mining, other industrial activities, paved roads, trackout, and paved parking lots;[15] for the Maryvale monitor, paved roads and unpaved roads;[16] for the Gilbert monitor, paved roads and unpaved roads; and for the West Chandler monitor, paved and unpaved roads. It should be noted that even complete elimination of emissions from these insignificant sources would not have resulted in attainment at any of the monitors.

EPA has not made a finding that PM–10 is a nonthreshold pollutant; that is, that there is a direct linear relationship between PM–10 reductions and health benefits to the public. Although the PM–10 NAAQS is set—indeed is required under CAA section 109(b) to be set—at levels that provide an adequate safety margin with respect to overall public health, some degree of risk remains at levels below the NAAQS. As described extensively in the recent proposal to revise the particulate matter NAAQS,[17] the overall consistency and coherence of the epidemiological evidence strongly suggests a likely causal role of ambient particulate matter in contributing to adverse health effects (61 FR 65648 and 65653); however, at the same time, EPA cautioned that seeking to derive quantitative health risk estimates from this evidence includes significant uncertainties (61 FR 65649 and 65653). These uncertainties are greater with respect to attempts to estimate health risks associated with the coarse fraction of particulate matter, that is, particulate with diameters between 2.5 and 10 microns (61 FR 65649). Fugitive dust is primarily coarse fraction PM–10 and, as demonstrated in the microscale plan, fugitive dust is the primary cause of 24-hour PM–10 exceedances in the Maricopa County area. Thus, ACLPI's claim that PM–10 is a nonthreshold pollutant is unsupported by the current scientific evidence.

IV. Final Actions

A. Final Approvals and Disapprovals

For the reasons discussed above and in the proposal, EPA is approving:

(1) Under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving, and industrial haul roads; and

(2) Under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c), the attainment and RFP demonstrations for the Maryvale and Salt River sites.

EPA is also approving the following as elements of the Arizona PM–10 State Implementation Plan for the Maricopa area:

(1) The resolution by the County of Maricopa to improve the administration of Maricopa County's fugitive dust control program and to foster interagency cooperation (adopted May 14, 1997);

(2) The resolutions of intent to work cooperatively with Maricopa County to control the generation of fugitive dust pollution adopted by the Cities of Phoenix (April 9, 1997), Tempe (March 27, 1997), Chandler (March 27, 1997), Glendale (March 25, 1997), Scottsdale (March 31, 1997), and Mesa (April 23, 1997) and the Town of Gilbert (April 15, 1997); and

(3) MCESD's Rule 310 (Open Fugitive Dust Sources), Rule 311 (Particulate Matter from Process Industries) and Rule 316 (Nonmetallic Mineral Mining and Processing).[18]

EPA is finding that the microscale plan: (1) provides the necessary assurances that the state and local agencies have adequate personnel, funding and authority under state law to carry out the submitted microscale plan; and (2) includes an adequate enforcement program, as required by CAA sections 110(a)(2)(E)(i) and 110(a)(2)(C).

For the reasons discussed above and in the proposal, EPA is disapproving:

(1) Under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads; and

(2) Under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c)(1), the attainment and RFP demonstrations at the West Chandler and Gilbert sites.

These approvals, disapprovals, and findings are applicable only to the microscale plan and thus, do not constitute EPA's final decision as to the State's full compliance with the requirements of CAA sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM for the eight source categories and CAA sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and RFP demonstrations at the Salt River, Maryvale, Gilbert and West Chandler monitoring sites. The State will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan and, because regional factors may influence attainment at these sites, the State will need to re-evaluate modeling at all four sites as part of that plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for a revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to

[15] Except for paved roads and paved parking areas, all these source categories are already subject to controls and in most cases are permitted by MCESD. Improvements to the overall permitting, inspection, and enforcement program at the County should improve implementation of the controls on these sources.

[16] Unpaved roads is a significant source category at the Salt River monitor and is thus a significant source category subject to RACM and BACM requirements even thought it was found to be an insignificant source category at the other three monitors. EPA is disapproving the plan's provisions for implementing RACM/BACM for this source category. The recently complete regional emission inventory shows that paved roads are very likely to be a significant source category in the regional plan. *1994 Regional PM–10 Emission Inventory for the Maricopa County Nonattainment Area* (Draft Final Report), Maricopa Association of Governments, May 1997, p. 2–2.

[17] 61 FR 65638 (December 13, 1996). The final notice revising the particulate matter standards was signed by the Administrator on July 16, 1997.

[18] These rules were originally approved by EPA as part of the approval of the Maricopa moderate area plan in 1995. 60 FR 18009. While not at issue in the litigation regarding that plan, EPA's approval of these rules was also incidently vacated by the *Ober* decision; therefore, EPA must restore its approval of these rules.

relevant statutory and regulatory requirements.

B. Consequences of the Final Disapprovals

As noted before, EPA required submittal of a microscale plan meeting both the moderate and serious area requirements for the 24-hour PM–10 standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. The microscale and regional plans taken together would satisfy both the moderate area requirements for the 24-hour standard mandated by the Ninth Circuit in *Ober* and the serious area planning requirements for both standards. The subject of this final action is the microscale plan only; the full regional plan is not due until late 1997. It is, therefore, premature to determine if the microscale plan, in and of itself, fully complies with the Clean Air Act requirements for moderate and serious PM–10 nonattainment areas. Such a determination is not possible until the regional plan is submitted and reviewed.

Because the microscale plan taken alone is not intended to fully comply with the RACM/BACM implementation, reasonable further progress and attainment demonstration requirements of the Clean Air Act, the final disapprovals of portions of the microscale plan do not trigger sanctions under CAA section 179(a). CAA section 179(a) requires the imposition of one of the sanctions in section 179(b) within 18 months of a disapproval if EPA ''disapproves a [State] submission * * * based on the submission's failure to meet one or more of the elements required by [the CAA]''. Because the purpose of the microscale plan was to, in effect, provide a down payment towards meeting certain requirements of the Act, EPA is not, at this time, proposing to find that the State has failed to meet any of the applicable elements required by the CAA as contemplated by section 179(a).

EPA is subject to the terms of a consent decree approved by the U.S. District Court for the District of Arizona on March 25, 1997. *Ober* v. *Browner,* No. CIV 94–1318 PHX PGR. The consent decree obligates EPA to propose a federal implementation plan (FIP) for PM–10 in the Maricopa nonattainment area by March 20, 1998 and finalize that FIP by July 18, 1998 [19] if the Agency disapproves all or part of the microscale plan. Therefore, based on the final disapprovals described above, EPA has an obligation to promulgate a regional moderate area PM–10 FIP that addresses the statutory requirements for attainment, RACM and RFP. Under the consent decree, the scope of this FIP obligation is reduced to the extent that EPA approves by July 18, 1998 SIP provisions meeting the statutory requirements for RACM, RFP and attainment for moderate PM–10 nonattainment areas.

EPA believes, as is expressed in CAA section 101(a), that air pollution control is primarily the responsibility of states and local jurisdictions. Therefore, the Agency will work with the State of Arizona and the local agencies and jurisdictions responsible for PM–10 planning and control in Maricopa County to develop SIP provisions that can reduce the scope of, or eliminate, any potential FIP. Considerable work is already underway or planned in the area to address the PM–10 problem. As noted before, the full serious area regional PM–10 plan is due December 10, 1997. In addition, the microscale plan contains two initiatives, MCESD's regional program to address controls on nonpermitted sources and the ADEQ/MCESD/NRCS agreement to address fugitive dust from agricultural sources, that are targeted at significant but currently uncontrolled sources of PM–10.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 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 business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 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. Similarly, withdrawal of the FIP contingency process does not impose any new requirements. Therefore, because the federal SIP approval and FIP withdrawal does not impose any new requirements, the Administrator certifies that they do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.,* 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 2 U.S.C. 1501–1571, 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 that 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 this rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimate costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or

[19] The FIP deadlines each advance 2 months if EPA fails to act on the microscale plan by July 18, 1997.

tribal governments in the aggregate or to the private sector. This federal action approves pre-existing requirements under State or local law, imposes no new Federal requirements, and withdraws other federal requirements applicable only to EPA. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, results from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) 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 judaical review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1997. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

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

Dated: July 18, 1997.

Harry Seraydarian,

Acting Regional Administrator.

For the reasons set forth in this notice, 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. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended as follows:

a. By removing and reserving paragraph (c)(73);

b. By revising paragraph (c)(74)(i)(A) and removing and reserving paragraph (c)(74)(i)(B);

c. By removing paragraph (c)(77)(i)(A)(*1*) and redesignating paragraph (c)(77)(i)(A)(*2*) as (c)(77)(i)(A)(*1*); and

d. By adding paragraph (c)(88), to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(74) * * *

(i) * * *

(A) Maricopa County Environmental Services Department new Rule 316, adopted July 6, 1993, and revised Rule 311, adopted August 2, 1993. Note: These rules are restored as elements of the State of Arizona Air Pollution Control Implementation Plan effective September 3, 1997.

* * * * *

(88) Plan revisions were submitted on May 7, 1997 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310, adopted September 20, 1994.

(*2*) Resolution To Improve the Administration of Maricopa County's Fugitive Dust Program and to Foster Interagency Cooperation, adopted May 14, 1997.

(B) The City of Phoenix, Arizona.

(*1*) A Resolution of the Phoenix City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted April 9, 1997.

(C) The City of Tempe, Arizona.

(*1*) A Resolution of the Council of the City of Tempe, Arizona, Stating Its Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 27, 1997.

(D) The Town of Gilbert, Arizona.

(*1*) A Resolution of the Mayor and the Common Council of the Town of Gilbert, Maricopa County, Arizona, Providing for the Town's Intent to Work Cooperatively with Maricopa County, Arizona, to Control the Generation of Fugitive Dust Pollution, adopted April 15, 1997.

(E) The City of Chandler, Arizona.

(*1*) A Resolution of the City Council of the City of Chandler, Arizona, Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 27, 1997.

(F) The City of Glendale, Arizona.

(*1*) A Resolution of the Council of the City of Chandler, Maricopa County, Arizona, Stating Its Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 25, 1997.

(G) The City of Scottsdale, Arizona.

(*1*) A Resolution of the Scottsdale City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 31, 1997.

(H) The City of Mesa, Arizona.

(*1*) A Resolution of the Mesa City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Particulate Air Pollution and Directing City Staff to Develop a Particulate Pollution Control Ordinance Supported by Adequate Staffing Levels to Address Air Quality, adopted April 23, 1997.

* * * * *

3. Section 52.123 is amended by adding paragraph (f) to read as follows:

§ 52.123 Approval status.

* * * * *

(f) Maricopa County PM–10 Nonattainment Area (Phoenix Planning Area). (1) *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) submitted by the Arizona Department of Environmental Quality on May 7, 1997.

(i) The Administrator approves the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving, and industrial haul roads.

(ii) The Administrator approves the attainment and reasonable further progress demonstrations for the Maryvale PM–10 monitoring site and Salt River PM–10 monitoring site.

(iii) The approvals in paragraphs (f)(1)(i) and (ii) of this section are applicable only to the plan identified in paragraph (f)(1) of this section and do not constitute the Administrator's final decision as to the State's full compliance with the requirements of Clean Air Act sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM and sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and reasonable further progress.

4. Section 52.124 is amended by adding paragraph (b) to read as follows:

§ 52.124 Part D disapproval.

* * * * *

(b) Maricopa County PM–10 Nonattainment Area (Phoenix Planning Area). (1) *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) submitted by the Arizona Department of Environmental Quality on May 7, 1997.

(i) The Administrator disapproves the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads.

(ii) The Administrator disapproves the attainment and reasonable further progress demonstrations for the Gilbert PM–10 monitoring site and West Chandler PM–10 monitoring site.

(iii) The disapprovals in paragraphs (f)(1)(i) and (ii) of this section are applicable only to the plan identified in paragraph (f)(1) of this section and do not constitute the Administrator's final decision as to the State's full compliance with the requirements of Clean Air Act sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM and sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and reasonable further progress. Therefore such disapprovals do not constitute state failures for the purpose of triggering sanctions under § 179(a) of the Clean Air Act.

[FR Doc. 97–20470 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0045a; FRL–5863–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definition of volatile organic compounds (VOC) and updates the Exempt Compound list in rules from the Bay Area Air Quality Management District (BAAQMD). The intended effect of approving this action is to incorporate changes to the definition of VOC and to update the Exempt Compound list in BAAQMD rules to be consistent with the revised federal and state VOC definitions.

DATES: This action is effective on October 3, 1997 unless adverse or critical comments are received by September 3, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

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

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules with definition revisions being approved into the California SIP include the following Bay Area Air Quality Management District Rules (BAAQMD): Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8-20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; and 8–50, Polyester Resin Operations. These rules were submitted by the California Air Resources Board to EPA on July 23, 1996.

Background

On June 16, 1995 (60 FR 31633) EPA published a final rule excluding acetone from the definition of VOC. On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On May 1, 1996 (61 FR 19231) EPA published a proposed rule excluding HFC 43–10mee and HCFC 225ca and cb from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and thus, were added to the Agency's list of Exempt Compounds.

The State of California submitted many revised rules for incorporation into its SIP on July 23, 1996, including the rules being acted on in this administrative action. This action addresses EPA's direct-final action for BAAQMD Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8–20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; and 8–50, Polyester Resin Operations. These rules were adopted by the BAAQMD on December 20, 1995 and were found to be complete on October 30, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and are being finalized for approval into the SIP.

This administrative revision adds acetone, perchloroethylene, HFC 43–10mee and HCFC 225ca and cb to the list of compounds which make a negligible contribution to tropospheric ozone formulation. Thus, EPA is finalizing the approval of the revised definitions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act).

EPA Evaluation and Action

This administrative action is necessary to make the VOC definition in BAAQMD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).