2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. 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

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 13, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: March 25, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

§ 52.2219 [Removed and reserved]

2. Section 52.2219 is removed and reserved.

3. Section 52.2220 is amended by adding paragraph (c)(150) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(150) Revisions to chapters 1200–3–9 ''Construction and Operating Permits'' and 1200–3–18 ''Volatile Organic Compounds'' were submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on June 3, 1996.

(i) Incorporation by reference.

(A) State of Tennessee regulation 1200–3–9 ''Construction and Operating Permits'', subpart 1200–3–9–.01(4)(b)(29)(i) effective on August 14, 1996.

(B) State of Tennessee regulation 1200–3–18 ''Volatile Organic Compounds'', subparts 1200–3–18–.24(1)(d), 1200–3–18–.24(3)(c)(2)(i) and 1200–3–18–.86(11)(c) effective August 10, 1996.

(ii) Other material. None.

[FR Doc. 97–9506 Filed 4–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–14–1–5535; FRL–5807–4]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Oregon for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the state to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for the Klamath Falls, Oregon, PM–10 nonattainment area.

EFFECTIVE DATE: April 14, 1997.

ADDRESSES: Copies of the state's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; EPA Oregon Operations Office, 811 SW Sixth Avenue, Third Floor, Portland, Oregon 97204; and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street SW, Washington, D.C. 20460, as well as at the above addresses.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The area within the Klamath Falls, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM–10 and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.338. The air quality planning requirements for moderate PM–10 nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The General Preamble provides a detailed discussion of EPA's interpretation of the Title I requirements. In this rulemaking action for the PM–10 SIP for the Klamath Falls nonattainment area, EPA's proposed action is consistent with its interpretations, discussed in the General Preamble, and takes into consideration the specific factual issues presented in the SIP. Additional information supporting EPA's action on this particular area is available for inspection at the addresses indicated above.

Those states containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under Section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that Reasonably Available Control Measures (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate Reasonable Further Progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

States with initial moderate PM–10 nonattainment areas were required to: 1) submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see Section 189(a)); and 2) submit contingency measures by November 15, 1993, which were to become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see Section 172(c)(9) and 57 FR 13543–13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address that submittal containing the new source review permit program in a separate action.

To address the CAAA of 1990, Oregon submitted a PM–10 nonattainment area SIP for Klamath Falls, Oregon, on November 15, 1991. A subsequent revision to the plan was submitted to EPA on September 22, 1995. EPA reviewed the November 15, 1991, and September 22, 1995, SIP revisions according to its interpretation of subpart 1 and 4 of Part D of Title I of the Act. EPA concluded from its review that the SIP met the applicable requirements of the Act and EPA, therefore, solicited public comment on its proposed approval. See the June 5, 1996, **Federal Register** document at 61 FR 28531 and its accompanying Technical Support Document (TSD). The June 5, 1996, document also indicated that anyone wishing to comment should do so by July 5, 1996.

On July 12, 1996, in response to the June 5, 1996, **Federal Register** document, EPA received comments from three parties. It is EPA's opinion, however, that the majority of these comments are beyond the scope of EPA's proposed action. Many of the comments focus on issues associated with a former Weyerhaeuser Company facility (currently owned by Collins Products LLC) located outside the designated nonattainment area. While the commenters raise several concerns with this facility, most of them do not apply to EPA's approval of the nonattainment area plan. As explained in more detail in the Response to Comment Document for this action, EPA is currently working with the State of Oregon to resolve issues associated with the facility.

EPA has thoroughly considered the comments in determining the appropriate action on the Klamath Falls PM–10 Control Plan. A summary of EPA's review of the comments is presented in the ''Response to Comments'' section below. A more detailed Response to Comment Document is available for public review at the above addresses.

EPA is approving the Klamath Falls SIP as described in the June 5, 1996, **Federal Register** document at 61 FR 28531 and its accompanying (TSD). The following is a review of those comments received during the public comment period.

II. Response to Comments

A. Area Designation

The commenters all stated that the boundary for the nonattainment area should be enlarged to include sources currently external to the Urban Growth Boundary (UGB). One group of commenters provided the following:

> NAAQS standards were the original keystone of the CAA. All ''areas''[2] containing a site for which air quality data show a violation of NAAQS were originally designated as non-attainment by Congress. § 107(d)(4)(B)(2) [sic]. Klamath Falls was classified as a moderate PM–10 non-attainment area by operation of law.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or may conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' document and, as appropriate, in today's notice and supporting information.

[2] Congress' use of the word area does not mean nonattainment area. The use of the word ''area'' must be given its plain meaning. The definition of ''area'' is not found in the act. When referring to non-attainment area, the act is using the definition found at § 171(2). The word area cannot logically

mean non-attainment area. This would be circular.

These same commenters contend that ''the urban growth boundary is an arbitrary land classification distinction.'' The comment states: ''The 1986 modeling fails to satisfy 40 CFR part 51, appendix W. The SIP modeling should have included a 'land use classification procedure or a population based procedure to determine whether the character' of the area was primarily urban or rural.''

The first comment implies that Klamath Falls was designated nonattainment for PM–10 in accordance with section 107(d)(4)(B)(ii) of the Clean Air Act (CAA). This is not entirely correct. Klamath Falls was designated nonattainment in accordance with section 107(d)(4)(B)(i). This section of the CAA states:

(i) each area identified in 52 **Federal Register** 29383 (Aug. 7, 1987) as a Group 1 area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM–10.

EPA believes it is important to point out that the Klamath Falls nonattainment boundaries were established, as were the boundaries for all the initial PM–10 nonattainment areas, through a public notice process which provided an opportunity for comment on the appropriateness of the boundary description. In the August 7, 1987, **Federal Register** document, Klamath Falls was identified by EPA as a PM–10 area of concern and categorized as a Group 1 area. EPA did not receive any comments questioning this action. Subsequently, on October 31, 1990, the area of concern was further defined as the area within the urban growth boundary. See 55 FR 45799. Therefore, upon passage of the Clean Air Act Amendments on November 15, 1990, the existing Klamath Falls Group 1 area, as defined by the urban growth boundary, was designated nonattainment and classified as a moderate PM–10 nonattainment area by operation of law. See 56 FR 56694 at 56705–56706, 56820 (Nov. 6, 1991) (document announcing formal codification of initial PM–10 nonattainment areas in 40 CFR part 81).

On March 15, 1991 (56 FR 11101), prior to the November 6, 1991, formal codification document, EPA announced all the designations and classifications occurring for PM–10 by operation of law upon enactment of the Clean Air Act (the ''initial PM–10 nonattainment areas''). In this **Federal Register** document EPA provided, among other things, an opportunity for the public to comment on EPA's announcement. EPA requested public comment on the announcement in order to facilitate public participation and avoid errors. EPA did not receive any comments disputing the extent and description (i.e., the boundary) of the Klamath Falls nonattainment area.

Furthermore, Oregon Administrative Rule (OAR) 340–31–500(10) contains a legal description of the Klamath Falls UGB. This rule is part of the federally-approved SIP.

EPA is not sure what distinction the commenter is attempting to draw in the context of section 107(d) between the word ''area'' and the phrase ''nonattainment area.'' That section itself defines a nonattainment area as, among other things, any area that does not meet, i.e., is violating, the national ambient air quality standard for any pollutant. Section 107(d)(1)(A)(i). Other provisions in section 107(d) determine the process by which particular areas are officially designated as nonattainment. Indeed, the definition in section 171(2) essentially refers back to the section 107(d) definition.

The comment on the urban vs. rural land use classification in section 8.2.8 of EPA's Guideline on Air Quality Models (Revised) is not relevant either to issues regarding the determination of the appropriate boundaries of the nonattainment area, or the method of modeling used to demonstrate attainment. Receptor, not dispersion modeling, is used to demonstrate attainment with the NAAQS. Section 8.2.8 was written primarily in the context of the Prevention of Significant Deterioration program. It was written to determine the dispersion coefficient when modeling a single source and not for the purpose of determining the nonattainment boundaries of an area.

B. Weyerhaeuser (Collins Products LLC) Issues

The primary issues associated with the Weyerhaeuser facility presented by a commenter include, but are not limited to: (1) dispersion modeling showing significant impacts at the Peterson School monitoring site, (2) dispersion modeling showing exceedances of the 24-hour NAAQS outside of the UGB, and (3) exclusion of Weyerhaeuser's PM–10 emissions from the plan's emission inventory. Each of these issues is addressed generally below and in more detail in the Response to Comment document.

1. Weyerhaeuser's Modeled Impacts at Peterson School

One commenter refers to two modeling analyses, one conducted in 1992 and one conducted in 1994, which indicated the facility had a significant impact at Peterson School and its emissions contributed to an exceedance of the NAAQS at an unmonitored location. Another modeling analysis, not referenced by the commenter, was conducted in 1995.

The 1992 and 1994 modeling analyses performed to assess Weyerhaeuser's impact at the Peterson School monitoring site have been superseded by a modeling analysis conducted in 1995. The modeling analysis in 1995 was performed to satisfy the SIP commitment that Weyerhaeuser's emissions be dispersion modeled ''to determine whether emissions from the Weyerhaeuser facility have a significant impact (annual average impact of 1 $\mu g/m^3$, or 24-hour impact of 5 $\mu g/m^3$) at the maximum concentration point within the nonattainment area (Peterson School monitoring site).''[3] The 1995 analysis was also performed to address deficiencies with the 1992 and 1994 analyses. Therefore, because the 1992 and the 1994 modeling analyses have been superseded, the comments received concerning the 1992 and the 1994 modeling analyses performed by either Weyerhaeuser or by the Oregon Department of Environmental Quality (ODEQ) are no longer relevant.

The 1995 analysis, summarized in an ODEQ August 4, 1995, memorandum, indicates that, on exceedance days, the Weyerhaeuser facility does not have a significant impact at the Peterson School monitoring site. Included in this analysis is the facility's current permitted allowable emissions, emission credits, and plant fugitive emissions. These allowable emissions are reflected in the facility's Air Contaminant Discharge Permit, issued on November 20, 1995. Through the state's operating permit program, this permit is part of the federally approved SIP.

This 1995 analysis indicates that the facility's current permitted emissions do not have a significant impact on the Peterson School site during exceedance days.

2. Weyerhaeuser's Modeled Impact at an Unmonitored Location

One commenter contends:

that there are presently exceedances within the Klamath area which may preclude redesignation. § 172(c)(1) provides that an approvable SIP ''shall provide for the attainment of the national primary ambient air quality standards.''

[3] State Implementation Plan for PM–10 in Klamath Falls, October 1991, Section 4.12.3.2.

EPA believes that the comment alludes to a modeled violation of the NAAQS at a location outside of the designated nonattainment area boundary. Specifically, preliminary dispersion modeling information indicates that the Weyerhaeuser Klamath Falls facility is causing a violation of the NAAQS at an unmonitored site outside the nonattainment area. The modeled violation of the NAAQS outside of the nonattainment area and the approvability of the Klamath Falls PM–10 Control Plan by EPA, are two separate issues. This rulemaking action concerns only the latter issue.

Nevertheless, to address the comment concerning the modeled violation, it is useful to note that the State of Oregon, with input from EPA, is currently working with Collins Products LLC to mitigate the modeled NAAQS violation. Further, as discussed in the June 5, 1996, **Federal Register** document (61 FR 28531) and the TSD for that notice, any violation of the NAAQS outside of an existing nonattainment area would be subject to its own planning requirements, analysis, and potential control measures.

3. Exclusion of Emissions

Both the 1991 version and the 1995 revision of the proposed Klamath Falls PM–10 SIP, to some degree, discuss Weyerhaeuser's emissions. As required by the nonattainment area plan, and as discussed in the TSD to the June 5, 1996, **Federal Register** document; the Response to Comments Document for this action; and elsewhere in this document, Weyerhaeuser evaluated its impact at the Peterson School monitoring site.

C. Slash Burning Emissions

EPA received comments from two commenters indicating that PM–10 emissions from slash burning are not properly quantified. One of the commenters contends that:

> DEQ's emission inventory for Klamath County tallies slash burning as the single largest source of emissions

and, given that, wonders how EPA can

> * * * support a plan that considers slash to be a 0% contributor when DEQ's own records show that over 3,000 [4] tpy come from slash.

[4] This figure is from 1987–88 using DEQ's emission factor applied to State Forestry Smoke Management Annual Report data.

As the commenter indicates, these emission estimates are on a county-wide basis and as such do not accurately reflect emissions generated from within the nonattainment area or the area in close proximity to the nonattainment area. For comparison purposes, the county is 6,135 square miles, whereas the nonattainment area is only approximately 70 square miles. In addition, specific information linking slash burning days with monitored exceedance days is not presented.

However, to address the potential impacts of forestry slash burning, a voluntary smoke management plan was developed and implemented. This plan establishes a Special Protection Zone (SPZ) around the nonattainment area. This SPZ restricts prescribed burning within a 20 miles radius of Klamath Falls during the winter residential wood burning season. As previously stated, exceedances of the 24-hour NAAQS have historically occurred during the wood burning season. To supplement the voluntary smoke management plan, a Memorandum of Understanding was signed by and between several timber companies, several national forests, the Oregon Department of Forestry, and the Bureau of Land Management. As discussed in the June 5, 1996, **Federal Register** document and its TSD, EPA believes these steps adequately address the potential impacts of slash burning on the nonattainment area.

D. Control Measures

It is one commenter's position that * * * reduction in emissions do not 'result from' implementation of the plan. § 107(d)(3)(E)(iii).''

1. Mandatory Residential Woodburning Curtailment Program

It is one commenter's belief that a lack of exceedances of the 24-hour NAAQS since January 1991, is

> * * * not a measure of the success of the mandatory woodstove curtailment program, but rather the accumulation of a number of significant changes that have been occurring. The most significant changes occurred at Weyco [Weyerhaeuser] * * *

Because the mandatory curtailment program (a voluntary program had been in place for several years) was implemented November 1, 1991, it is this commenter's opinion that the first complete year where reductions from the mandatory program would have occurred is in 1992.

It is EPA's opinion that the chosen control strategies, which include the mandatory curtailment program, have brought the area into attainment with the NAAQS. This is discussed in more detail in the June 5, 1996, **Federal Register** document, the TSD to that document, and the Response to Comment Document for this document.

Based on ambient monitoring, the last seven exceedances of the 24-hour NAAQS occurred in 1991. All of the exceedances occurred in January of that year. On October 31, 1991, one day before the mandatory curtailment program was implemented, a monitored value of 136 $\mu g/m^3$ was recorded. On November 1, 1991, the mandatory curtailment program was implemented, and, during the 1991/1992 woodburning season, the highest monitored value was 133 $\mu g/m^3$. During November and December of 1991, there were no monitored exceedances of the 24-hour NAAQS, thus, indicating that emission reductions were being achieved by the end of 1991. In mid-1992, Weyerhaeuser's five hog fuel boilers were taken out of service. This is after completion of a successful woodburning season (November 1991 through February 1992) without any exceedances of the NAAQS. Therefore, it is not unreasonable for EPA to believe that improvement in air quality is due to implementation of the control measures. As discussed in the TSD to the June 5, 1996, **Federal Register** document, ODEQ has conducted compliance surveys and documented the effectiveness of the program.

However, EPA also recognizes that the Weyerhaeuser facility has reduced its actual PM–10 emissions and has taken a reduction in its allowable emissions of over 600 tons since 1992. The facility is currently permitted at 111 pounds per hour, a substantial reduction from its previous limit.

2. Open Burning

The nonattainment area plan does not request credit for its open burning control measures. It is one commenter's opinion that this is not appropriate because significant open burning emissions existed in the baseline period.

It is the state's prerogative to request credit for a specific control measure. In regard to open burning, the plan does contain open burning restrictions, but ODEQ chose not to request emission reduction credits for the reductions resulting from the open burning control measure. Nevertheless, emission reductions from the plan's control measures will be realized and remain enforceable.

E. Attainment Demonstration Method

ODEQ conducted an attainment demonstration based upon receptor modeling proportional roll-back calculations to estimate the emission reductions required in 1994 to achieve the NAAQS. One commenter does not agree with this method and states: ''The SIP ignores the results of the dispersion

model [1992 modeling], uses an inappropriate rollback model with faulty emission inputs and attempts to use a receptor model for validation.'' The commenter further states the SIP violates the CAA because two documents contained in Section 3.2 of 40 CFR Part 51, Appendix W, were not used to justify the use of rollback.

The same commenter provided a chart (Attachment D) relating ''total wood production at Weyerhaeuser and PM–10 readings at Peterson School'' and states that the correlation coefficient (R square value) is 0.94 using linear regression in an attempt to demonstrate that Weyerhaeuser was a dominant contributor to exceedances at Peterson School.

As noted elsewhere, the 1992 modeling analysis has been superseded by a modeling analysis conducted in 1995 and, therefore, the 1992 analysis is no longer relevant.

As previously stated, the initial moderate PM–10 nonattainment areas were required to submit a demonstration (including air quality modeling) showing that the plan would provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see Section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (see 57 FR 13539). Alternatively, the state had to show attainment by December 31, 1994, or that attainment was impracticable.

Generally, EPA recommends that attainment be demonstrated according to the PM–10 SIP Development Guideline (June 1987), which presents three methods. Federal regulations require demonstration of attainment ''by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes'' (40 CFR 51.112). The preferred method is the use of both dispersion and receptor modeling in combination. The regulation and the guideline also allow the use of dispersion modeling alone, or the use of two receptor models in combination with proportional rollback.

As indicated in the General Preamble, 57 FR at 13539, EPA has developed a supplemental attainment demonstration policy for initial PM–10 nonattainment areas such as Klamath Falls. The Preamble provides additional flexibility in meeting the PM–10 attainment demonstration requirements. An earlier April 2, 1991, memorandum titled, ''PM–10 Moderate Area SIP Guidance: Final Staff Work Product,'' contained ''Attachment 5'' describing the same policy. The policy explains that in certain circumstances a modified attainment demonstration may be appropriate on a case-by-case basis. It may be reasonable to accept a modified attainment demonstration in cases where ''time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration'' by November 15, 1991. The policy further explains that its application is reserved for those initial PM–10 nonattainment areas that have ''completed the technical analysis * * * and made a good-faith effort to submit a final SIP by their November 15, 1991, due date.''

During development of the Klamath Falls initial moderate area PM–10 attainment plan, ODEQ did not use dispersion modeling to estimate the design values or in the attainment and maintenance demonstrations. This was due to: (1) the lack of adequate historical meteorological data, (2) the late receipt in the development process of spatially resolved emission inventory data needed for modeling, (3) the fact that the intense and extremely shallow inversions and calm winds in the area (typical wind speeds during exceedances days are less than one meter per second) are not conducive to dispersion modeling (EPA does not have and has not developed an approved guideline model for conditions of this type), and (4) the fact that on winter days, when worst case air quality conditions occur, the airshed is heavily dominated by emissions from woodstoves, fireplaces, and road sanding.

The Klamath Falls PM–10 attainment demonstration is based upon receptor modeling proportional roll-back calculations to estimate the emission reductions required in 1994 to achieve the NAAQS. Emission inventory estimates were reconciled with Chemical Mass Balance (CMB—version 7.0) receptor modeling. Results from two emission estimation methods—emission inventory and receptor modeling—are in agreement that woodsmoke and soil dust are the major sources of emissions on exceedance days. According to the emission inventory, woodsmoke equals 80% and soil dust equals 8% of total PM–10 particulate. According to the CMB analysis, woodsmoke equals 82% and soil dust equals 10.9% of particulate. This issue is discussed in more detail in the TSD for the June 5, 1996, **Federal Register** document (see 61 FR 28537).

EPA guidance on CMB modeling specifies that the apportionment should account for at least 80% of the measured aerosol mass. ODEQ's analysis accounted for 96% of the mass.

The comment that the two documents (*Interim Procedures for Evaluating Air Quality Models* and *Protocol for Determining the Best Performing Model*) contained in Section 3.2 of 40 CFR part 51, appendix W are not used to justify the use of roll-back is correct. This is because the documents are intended to be used to evaluate the performance of dispersion models not receptor models.

Because the input data for the graph presented in Attachment D were not provided, EPA was not able to verify the correlation. In addition, the graph presented in Attachment D, entitled ''ANNUAL PM10 VS WEYCO LUMBER PRODUCTION'', shows lumber production (board feet × 100,000) on the Y axis, and annual PM–10 concentrations ($\mu g/m^3$) on the X axis. The labeling of the X and Y axes appear to be in error. For example the graph indicates that, when lumber production is approximately 70 × 100,000 board feet, annual PM–10 concentrations should be approximately 200 $\mu g/m^3$. This value appears to be in error because monitored annual PM–10 concentrations have never been above 73 $\mu g/m^3$. Furthermore, the graph does not consider implementation of the area's control measures (e.g., woodsmoke curtailment, road dust measures, woodstove changeout), which significantly reduced emissions over the same time period covered by the graph, and the resulting improvement in air quality due to implementation of the selected control measures.

Therefore, it is EPA's opinion that the graph presented in Attachment D is inconclusive evidence that Weyerhaeuser was (is) a dominant contributor to exceedances at Peterson School. In conclusion, because ODEQ followed EPA guidance, used the approved EPA chemical mass balance model, and because the CMB results were verified by the emission inventory, EPA is satisfied that the source apportionment provided by ODEQ in the Klamath Falls SIP is adequate.

EPA believes this conclusion is strengthened by the fact that, since implementation of the control strategies in 1991, the area has not exceeded the PM–10 NAAQS and has, based on monitored values, met the CAA attainment date of December 31, 1994.

F. Contingency Measures

It is one commenter's opinion that the SIP's contingency plan ''is flawed,'' ''the contingency section of the CAA has been violated,'' and the measures do not ''protect against backsliding.'' These comments are made in regard to the

plan's contingency measure applicable to the Weyerhaeuser facility.

EPA disagrees that the contingency section of the CAA has been violated. All moderate area SIPs, due November 15, 1991, were required to contain contingency measures that would be immediately implemented upon a determination by EPA that an area failed to make RFP or to attain the standard by the applicable attainment date. Besides a contingency measure applicable to the Weyerhaeuser facility (see OAR 340–21–200), the nonattainment area plan also contains contingency measures applicable to woodstoves, industrial sources located inside the nonattainment area, and numerous road dust control measures. These measures were reviewed and discussed in detail in the TSD for the June 5, 1996, **Federal Register** document. The attainment date for the Klamath Falls nonattainment area was December 31, 1994. Based on monitored air quality data, the Klamath Falls PM–10 nonattainment area has demonstrated RFP and attained the PM–10 NAAQS. Air quality monitors located within the designated nonattainment area boundary have not recorded an exceedance of the NAAQS since 1991.

In light of all the above, EPA believes the Klamath Falls SIP does provide for ''meaningful contingency planning'' that meets the requirements of the Act.

III. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is approving the plan revisions submitted to EPA on November 15, 1991, and September 22, 1995. EPA has determined that the submittals meet all of the applicable requirements of the Act due on November 15, 1991, with respect to moderate area PM–10 submittals. Also, EPA is granting the exclusion from PM–10 control requirements applicable to major stationary sources of PM–10 precursors. In addition, EPA is approving the SIP revision submitted on November 15, 1991, as meeting the requirement for contingency measures.

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

IV. Effective Date

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final rule is effective April 14, 1997. Section 553(d)(3) of the APA allows EPA to waive the requirement that a rule be published 30 days before the effective date if EPA determines there is ''good cause'' and publishes the grounds for such a finding with the rule. Under section 553(d)(3), EPA must balance the necessity for immediate federal enforceability of these SIP revisions against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. *United States* v. *Gavrilovic*, 551 F 2d 1099, 1105 (8th Cir. 1977). The purpose of the requirement for a rule to be published 30 days before the effective date of the rule is to give all affected persons a reasonable time to prepare for the effective date of a new rule. Id.

EPA has determined good cause exists to make this **Federal Register** document effective upon publication. The rules made federally enforceable by this **Federal Register** document have been enforceable as a matter of state law for more than five years. In addition, the PM–10 emission inventory contained in the Klamath Falls PM–10 Control Plan must be federally approved before the Oregon Department of Transportation can make conformity determinations for several transportation projects in Klamath Falls which will benefit the general public. The imposition of the 30-day delay in the effective date of this SIP revision would require some of these projects to be postponed for an additional 30 days. Therefore, EPA believes the 30-day publication period would cause undue burdens to the public, and to affected governmental and transportation planning agencies.

Thus, EPA has determined that good cause exists to make these SIP revisions immediately effective and that the principles of fundamental fairness are met because all known affected persons have been afforded a reasonable time to prepare for the effective date of these SIP revisions. Accordingly, pursuant to section 553(d)(3) of the APA, this Oregon SIP revision approval is effective upon publication in the **Federal Register**.

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. 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, 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 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 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 on by the rule.

EPA has determined that the approval action 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

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 13, 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 CAA 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, Particulate matter.

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 28, 1997.

Chuck Clarke,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(119) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(119) November 15, 1991, and September 20, 1995, letters from the Director, Oregon Department of Environmental Quality, to the Region 10 Regional Administrator, EPA, submitting the PM–10 Klamath Falls, Oregon, PM–10 Control Plan and amendments as revisions to its SIP.

(i) Incorporation by reference.

(A) State Implementation Plan for PM–10 in Klamath Falls, dated October 1991 and revised August 1995; and Appendix 4: Ordinances and Commitments, Ordinance No. 6630 (adopted September 16, 1991), and Ordinance No. 63 (adopted July 31, 1991)—Chapters 170 and 406.

[FR Doc. 97–9508 Filed 4–11–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Part 1401

RIN 1090–AA60

Department of the Interior Acquisition Regulation; Regulatory Streamlining

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: In the interests of streamlining processes and improving relationships with contractors, the Department of the Interior (DOI) is issuing this final rule which amends 48 CFR Chapter 14 by revising and updating the Department of the Interior Acquisition Regulation (DIAR).

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Mary L. McGarvey at (202) 208–3158, Department of the Interior, Office of Acquisition and Property Management, 1849 C. Street N.W. (MS5522 MIB), Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

A. Background

Under the auspices of the National Performance Review, a thorough review of the DIAR was conducted. The review revealed unnecessary and outdated regulations, and some excessively burdensome procedures.

In the interests of streamlining processes and improving relationships with contractors, essential portions of the DIAR are being revised, retained and/or removed in 48 CFR, where appropriate. The review identified four Sections in Subpart 1401.3 to be removed from 48 CFR. Specifically, Sections 1401.301 Policy; 1401.301–70 Definitions; 1401.302 Limitations; and 1401.304 Agency control and compliance procedures were removed from 48 CFR. In Subpart 1401.6 Contracting Authority and Responsibilities all ten sections are being removed from 48 CFR. We changed titles, rewrote language, and eliminated redundant FAR material from the Sections and retained them in the Department of the Interior Acquisition Regulation. Subpart 1401.1 Purpose, Authority, Issuance including section 1401.106 OMB approval under the Paperwork Reduction Act and Section 1401.303 Publication and codification of Subpart 1401.3 Agency Acquisition Regulations are revised and retained in 48 CFR Chapter 14.

Required Determinations

The Department believes that public comment is unnecessary because the revised material implements standard Government operating procedures. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Department finds good cause to publish this document as a final rule. This rule was not subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department determined that this rule will not have a significant economic impact on a substantial number of small entities because no requirements are being added for small businesses and no protections are being withdrawn. The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969. The Department has certified that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 48 CFR Part 1401

Government procurement, Reporting and recordkeeping requirements.

Dated: April 4, 1997.

Mary Ann Lawler,

Acting Assistant Secretary—Policy, Management and Budget.

Chapter 14 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR part 1401 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

2. Subpart 1401.1 is revised to read as follows: