Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2)).

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.

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

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 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain duties. EPA has examined whether the rules being approved by this action 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 regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 1, 1995.

Patrick M. Tobin,

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 Z—Mississippi

2. Section 52.1270, is amended by adding paragraph (c)(27) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(27) Amendments to Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants'' to be consistent with federal regulations as specified in 40 CFR Part 257.

(i) Incorporation by reference. Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants'' effective January 9, 1994, except SECTION 8. PROVISIONS FOR HAZARDOUS AIR POLLUTANTS.

(ii) Additional Material. None.

[FR Doc. 96–2962 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NE–7–1–71549; FRL–5399–7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives full approval to the State Implementation Plan (SIP) submitted by the state of Nebraska for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151.

DATES: This action is effective April 12, 1996 unless by March 13, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: Section 176(c) of the Clean Air Act, as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to an SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of

the National Ambient Air Quality Standards (NAAQS), and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, the EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The General Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and non-Federal entities (section 51.851(b)).

On November 6, 1991, the EPA promulgated a nonattainment designation for the area surrounding the Asarco lead refinery in Omaha, Nebraska, in response to violations of the lead NAAQS. Sections 51.851 and 93.151 of the General Conformity rule require that states submit an SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, an SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

On June 14, 1995, the state of Nebraska submitted an SIP revision meeting the requirements of §§ 51.851 and 93.151 of the General Conformity rule. The submission adopts by reference 40 CFR part 93, subpart B, except 40 CFR 93.151. The omitted section contains the criteria for EPA approval of General Conformity SIP revisions, and also states the effect of EPA approval of an SIP revision. It is not a necessary component of the state's substantive rules governing general conformity determinations.

The Nebraska rule also modifies 40 CFR 93.160(f) and 40 CFR 93.160(g) to adapt the language in the Federal regulations to the state rule. It deletes the language in 93.160(f) stating that the ''implementation plan revision required in § 93.151 shall provide that,'' and retains the substantive requirement in paragraph (f). It also revises paragraph (g) to refer to adoption and approval of the Nebraska SIP revision, in place of the reference in EPA's rule to SIP revisions generally.

This SIP revision was adopted by the Nebraska Environmental Council on December 2, 1994. The rule was signed by the Governor on May 24, 1995, and became effective on May 29, 1995.

Because the Nebraska rule adopts the substantive requirements of EPA's rule by reference, it meets the criteria in §§ 51.851 and 93.151 for approval of General Conformity SIP revisions.

EPA Action

By this action EPA grants full approval of Nebraska's June 14, 1995, submittal. This SIP revision meets all of the requirements set forth in 40 CFR 51.851 and 93.151.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule, based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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.

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

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

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 has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate. Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. 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, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 14, 1996.

Dennis Grams,

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 CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(42) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(42) A Plan revision was submitted by the Nebraska Department of Environmental Quality on June 14, 1995, which incorporates by reference EPA's regulations relating to determining conformity of general Federal actions to State or Federal Implementation Plans.

(i) Incorporation by reference.

(A) A revision to title 129, adding chapter 40, entitled ''General Conformity'' was adopted by the Environmental Quality Council on December 2, 1994, and became effective on May 29, 1995.

[FR Doc. 96–2975 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[Region II Docket No. 148, NJ25–1–7282; FRL–5409–4]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is giving a limited approval to part of a request from New Jersey to revise its State Implementation Plan (SIP) for the control of carbon monoxide (CO) to incorporate New Jersey's oxygenated gasoline program. New Jersey submitted these revisions in response to requirements established under the Clean Air Act, as amended in 1990. EPA is approving New Jersey's oxygenated gasoline program for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island consolidated metropolitan statistical area (CMSA) as the program applies for the four months from November 1 through the last day of February. In previous proposals for the States of New York and Connecticut, EPA has proposed to determine that those four months are the entire period when the New York-Northern New Jersey-Long Island CMSA is prone to high ambient concentrations of CO. In a separate document published in today's Federal Register, EPA is soliciting comment on this determination for the limited purpose of inviting comment on additional information concerning emission modeling related to New Jersey's portion of the multi-state CMSA.

EFFECTIVE DATE: This final rule is effective on March 13, 1996.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 290 Broadway, 16th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York 10007–1866 (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

Motor vehicles are significant contributors of CO emissions, which are harmful to human health. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen in the fuel enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting in cold weather.

The Clean Air Act (Act) sets forth a number of requirements for states with areas designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) set for CO to submit revisions to their State Implementation Plans (SIPs). Among these is a requirement under section 211(m) that states with CO nonattainment areas at or above a 9.5 parts per million (ppm) design value implement 2.7 percent oxygenated gasoline programs by November 1, 1992 and submit these programs as SIP revisions. This requirement applies to New Jersey because the State contains a portion of the New York-Northern New Jersey-Long Island nonattainment area, which has a design value for CO above 9.5 ppm. The requirement had also originally applied to Southern New Jersey as well; however, that area, which is part of the Philadelphia CO nonattainment area, is currently in attainment for CO and, as such, is no longer required to implement an oxygenated gasoline program. 60 FR 62741, December 7, 1995. The New York-Northern New Jersey-Long Island CO nonattainment area is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA) and includes the New Jersey Counties of Bergen, Essex, Hudson, Union, and parts of Passaic. The nonattainment area in Passaic County includes the Cities of Clifton, Paterson, and Passaic. New Jersey's portion of the larger CMSA, within which oxygenated fuel sale is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Ocean, Passaic, Somerset, Sussex, Union and Warren.

On November 15, 1992, New Jersey submitted to EPA its oxygenated fuels program contained in New Jersey Administrative Code Title 7, Chapter 27, Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels'' (adopted September 1, 1992, and operative November 1, 1992). The program required oxygenated fuel to be supplied during a CO control period of seven months each year, extending from October 1 through April 30. EPA proposed to approve this submission, along with a number of other revisions to New Jersey's CO SIP, on November 10, 1994 (59 FR 56019). On February 7, 1995, New Jersey modified its oxygenated fuels regulations to shorten the length of the control period to four months each year, from November 1 through the last day of February. 27 N.J.R. 787(a), February 21, 1995. This modification has not been submitted to EPA as a SIP revision. Subsequently, on September 15, 1995, in the course of actions on the New York and Connecticut CO SIPs, EPA proposed to find that the appropriate length of the control period for the entire New York-