D. 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.

EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, 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. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, Parts 51 and 93 of the Code of Federal Regulations are proposed to be amended as follows.

PARTS 51 AND 93—[AMENDED]

1. The authority citation for parts 51 and 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Parts 51 and 93 are proposed to be amended by adding identical §§ 51.446 and 93.137 to read as follows:

§ . Special exemptions from conformity requirements for pilot program areas.

EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of this subpart if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA and DOT. In order to obtain EPA and DOT approval on its final project agreement, each area must provide a 30-day public comment period and address comments received on its proposed alternative conformity requirements. The alternative conformity requirements must be proposed to fulfill all of the requirements of and achieve results equivalent to or better than section 176(c) of the Clean Air Act. Areas selected to participate in the pilot program must comply with their final project agreements. After the three-year duration of the pilot program has expired, areas will be subject to the requirements of this subpart.

[FR Doc. 96–16591 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA3–1–5479; FRL–5534–9]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, Environmental Protection Agency (EPA) invites public comment on its proposed approval of certain elements of the Spokane PM–10 attainment plan, including control measures, and the granting of a temporary waiver of the attainment date for the Spokane, Washington particulate nonattainment area. This is based on EPA's review of the State implementation plan (SIP) revision submitted by the State of Washington for the purpose of attaining 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 Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for Spokane, Washington due on November 15, 1991.

DATES: Comments on this proposed action must be postmarked by August 8, 1996.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Office of Air Quality (OAQ 107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittals and other information supporting this proposed action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Office of Air Quality, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ 107), US Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

The Spokane, Washington, area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, by operation of law upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991)(official designation codified at 40 CFR 81.348). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[2] The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing provisions to implement the moderate PM–10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Washington moderate area PM–10 SIP revision for the Spokane nonattainment area, EPA is proposing to apply its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely

[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. sections 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 conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit an implementation plan that includes, among other things, the following by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (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—RACT) 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.

Some provisions were due at a date later than November 15, 1991. States with initial moderate PM–10 nonattainment areas were required to 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)). Such States also were to submit contingency measures by November 15, 1993, which 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 13543–44).

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). For PM–10 nonattainment areas, Section 188(f), Waivers for Certain Areas, can apply as well.

In this action, EPA is proposing to approve portions of the PM–10 nonattainment area plan for Spokane, Washington that apply to sources of PM–10 other than windblown dust. For PM–10 24-hour exceedences caused primarily by windblown dust sources EPA is proposing to grant a temporary waiver of the attainment date for the Spokane area. Discussion of EPA's requirements for a temporary waiver are detailed in 59 FR 41998–42017 (August 16, 1994). In this guidance EPA provides certain flexibility for areas where the relative significance of anthropogenic and nonanthropogenic sources is unknown. The Washington Department of Ecology (Ecology) has presented preliminary data, based on an analysis of the relative contributions of anthropogenic and nonanthropogenic sources of PM–10 contributing to eastern Washington exceedences, indicating that nonanthropogenic sources may be significant in the Spokane nonattainment area during windblown dust events. EPA proposes to accept this preliminary information and grant a temporary waiver of the moderate area attainment date to December 31, 1997. This temporary waiver allows Ecology and EPA to evaluate further the windblown dust PM–10 problems in the Spokane PM–10 nonattainment area. Once the evaluation is completed and reviewed, and/or the temporary waiver expires, EPA will make a final determination on the designation and classification for the Spokane nonattainment area.

In order to move forward with consideration of the temporary waiver, a Memorandum of Agreement was signed in August 1995, by Chuck Clarke, Regional Administrator EPA, Region 10, and Mary Riveland, Director, Washington State Department of Ecology. This agreement outlines the approach each agency will take in completing work on the PM–10 problems in both the Spokane and Wallula nonattainment areas. The agreement contains commitments and conclusions including:

> EPA will propose and, subject to public comment, grant a conditional, temporary, waiver of the attainment date for 24-hour PM–10 exceedances during windblown dust events for Spokane and Wallula until the end of 1997 (12/31/97). The waiver would expire on 12/31/97, and throughout its effective period, will apply only where windblown dust (both anthropogenic and nonanthropogenic) is an important contributor to the exceedances.
>
> The Spokane and Wallula nonattainment areas will retain the classification of a moderate PM–10 nonattainment area, until 12/31/97 unless PM–10 air quality data indicates that the area has failed to attain the 24-hour health standard because of exceedances that cannot be primarily attributed to windblown dust.

As required in the EPA guidance, Ecology and EPA are proceeding under written agreements which include a protocol for both technical analysis (emission inventory, emission factor development, dispersion modeling, receptor modeling, etc.) and evaluation of alternative control measures, including Best Available Control Measures. The activities required under the protocol are generally referred to as the Columbia Plateau PM–10 Project funded by EPA, Ecology, and the U.S. Department of Agriculture (USDA). Cooperating agencies include USDA's Agricultural Research Service and Natural Resources Conservation Service, as well as several local conservation districts, Washington State University, the University of Idaho, and others.

The temporary waiver of the attainment date, if finalized by EPA, will defer approval/disapproval actions on several otherwise required elements of the moderate area plan for Spokane. Since the purpose of the above described MOA is to have control measures in place that assure that the PM–10 NAAQS will not be violated from sources that are primarily urban in nature, the submission of an attainment demonstration, emission inventory, and contingency measures for such urban sources are necessary and required. However, if the temporary waiver is finalized, the attainment demonstration, emission inventory, control measures and contingency measures for windblown dust sources (e.g. agriculture and natural sources) will be deferred. EPA will take final action on the windblown dust elements after the Columbia Plateau analysis is completed and/or the expiration of the temporary waiver. EPA's reasoning for this approach is described in more detail under the various SIP element headings of this notice.

In this action EPA is also proposing to approve regulatory orders for the Kaiser, Trentwood facility that will allow use of alternative opacity standards under certain very specific conditions. These orders will lower the allowable emissions from the facility and thus would not have an adverse impact on the attainment demonstration for other than windblown dust sources in the Spokane area.

EPA is also proposing to approve the exclusion from precursor controls as described in part II. 5 below. EPA invites public comment on the proposed action described in this section.

This action is EPA's response to Washington State Implementation Plan revision submitted for the Spokane PM–10 nonattainment area on November 15, 1991, January 31, 1992, and December 9,

1994. In addition, supplemental information was submitted by Ecology on May 18, 1995.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

Ecology held a public hearing to receive public comment on the November 15, 1991, Spokane PM–10 SIP revision on October 23, 1991. WDOE adopted the SIP revision for the area on November 14, 1991, and the plan was submitted to EPA on November 15, 1991. Ecology submitted an addendum to the November SIP revision that contained a regulatory order on January 31, 1992. The SIP revision submittals were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. A letter dated May 5, 1992, was forwarded to the WDOE indicating the completeness of the submittals and the next steps to be taken in the review process. On December 9, 1994, Ecology submitted another SIP revision for the Spokane PM–10 nonattainment area. This 1994 revision contained additional control measures, a more detailed technical analysis of the problem, and other improvements to the November 15, 1991 submittal.

2. PM–10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants for the base year in the nonattainment area. Because the submission of the emissions inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain) the emissions inventory must be received with the demonstration (see 57 FR 13539).

In the December 9, 1994, Spokane plan Ecology submitted an emissions inventory of all PM–10 sources, except windblown dust, which estimated actual annual emissions for the base year of 1990, allowable emissions for the attainment year of 1994 and allowable emissions for the 3-year maintenance year of 1997. Ecology concluded that, after excluding windblown dust, Spokane has three very different emission scenarios that could cause PM–10 short-term, 24-hour standard violations. Each scenario occurs at a different time of the year, has different meteorological conditions, and each has one source that dominates the source mix. Ecology illustrated the three scenarios by presenting separate 24 hour emission inventories for the following worst case days: an October 21, 1987 inventory for conditions where unpaved roads were the major source, a March 12, 1993 inventory where paved roads were the dominant source, and a January 21, 1987 analysis for residential wood combustion exceedences.

For windblown dust, Ecology prepared and submitted as an appendix to the Spokane plan, a report titled ''An Analysis of the Impact of Biogenic PM–10 Sources on the Spokane PM–10 Nonattainment Area'', February 1992, which presented the most recent information on the emission sources in the Columbia Plateau region of eastern Washington. The report estimates gross annual emissions from anthropogenic and nonanthropogenic sources of PM–10 from a large area. Preliminary information is presented indicating that about 40% of the annual emissions in eastern Washington are from anthropogenic sources and 60% from nonanthropogenic sources. No attempt was made to estimate the highest 24-hour emissions which, depending on the location, is expected to vary greatly. This information suggests, but does not conclusively show, that nonanthropogenic sources contribute significantly to the Spokane nonattainment area.

In summary, the 1994 annual emission inventory, excluding windblown dust, indicated that the largest sources of PM–10 were: unpaved roads (43%), paved roads (20%), residential wood combustion (18%) and industrial (14%). The SIP revision also includes 24-hour emission inventories for each of the three scenarios mentioned above.

The emissions inventory estimating actual emissions for all significant sources except for windblown dust sources appears to be accurate and comprehensive consistent with the requirements of section 172(c)(3) of the Clean Air Act and national guidance.[4] Recent information from the Columbia Plateau study indicates that the emission factors used for the windblown dust report may be inappropriate. However, EPA thinks that the assumptions used were the best available at the time the Spokane plan was prepared. The Columbia Plateau PM–10 Project will include the development of emission factors specifically for eastern Washington and preparation of regional emission inventories that will be used to update the Spokane plan.

One final emission inventory issue relates to the use of actual emission estimates from two major stationary (stack) PM–10 sources. Ecology appropriately used allowable emissions for most of the stationary sources that had allowable emission limits. However, Ecology underestimated the allowable emissions for the two major stationary PM–10 sources, the Kaiser primary aluminum smelter at Mead, and the Kaiser aluminum rolling mill facility at Trentwood. Supplemental information submitted on May 18, 1995, concludes that the allowable emissions for those facilities are greater (by a factor of 2 for Kaiser-Trentwood) than the emissions used in the plan. The Spokane County Air Pollution Control Agency (SCAPCA) has corrected this problem for the Kaiser-Trentwood facility by issuing new regulatory orders which specifically limit the PM–10 emissions from the facility. The allowable emissions from the Kaiser-Mead facility are not significantly greater than the original allowable emission estimates used by Ecology and would not adversely impact the attainment demonstration for sources considered in the plan.

EPA proposes to approve the emission inventories, excluding windblown dust, at this time. The windblown dust inventory is being prepared as part of the Columbia Plateau project. When the project is completed the detailed

[3] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document is consistent with the Act.

emission inventory will be used for analysis of windblown dust. Therefore EPA proposes to defer action on the windblown dust emission inventory until after the temporary waiver expires.

3. RACM (Including RACT)

As noted above, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

The Spokane annual emission inventory identified four urban (non windblown dust) sources as major contributors of PM–10 emissions; paved roads, unpaved roads, residential wood combustion and industrial sources. However, analysis of the 24-hour PM–10 problems conclude that industrial sources are not a major contributor. Ecology prepared RACM evaluations for paved and unpaved roads and residential wood combustion sources. Ecology did not present an evaluation of the controls that are currently being applied to agricultural sources likely impacting the Spokane PM–10 problem. For unpaved roads, the City of Spokane has spent more than six million dollars to pave over 16 miles of roads. Road paving is estimated to result in a PM–10 reduction of at least 90% from an unpaved road surface.

SCAPCA also adopted an unpaved road control regulation which requires that the City of Spokane, Spokane County, and the Town of Millwood submit emission reduction and control plans for unpaved surfaces in their respective jurisdiction. SCAPCA approves the plans and the respective jurisdictions are required to implement the plans. In addition, to address the paved road emissions the City of Spokane adopted resolutions committing to conduct additional (more frequent and earlier) street sweeping to better control PM–10. The City also committed to reduce the use of sand for traction material by 50%, increase the use of liquid deicers, plow major arterials more frequently, and sweep the arterial as soon as practical after sanding.

EPA proposes to accept Ecology's RACM analysis for paved and unpaved roads and concludes that reasonable measures are being implemented.

Residential wood combustion is regulated by SCAPCA through a comprehensive regulation that is based on state statute. The program contains limitations on opacity, curtails wood burning on days of poor air quality, prohibits the burning of inappropriate fuels, and other emission reducing measures. Curtailment of uncertified woodstoves and fireplaces is initiated when PM–10 levels are estimated to be 75 ug/m3. Ecology estimates an 80% reduction in emissions for the program. EPA proposes to determine that Spokane is implementing RACM for residential wood combustion sources.

The only two major (greater than 100 tons per year) stationary source facilities within the nonattainment area, the Kaiser aluminum facilities at Trentwood and Mead, were not evaluated specifically for RACT by either Ecology or SCAPCA. However, attainment is demonstrated for the PM–10 sources other than windblown dust, using allowable emissions from the facilities. Therefore a RACT determination is not necessary and the SIP revision does not include any additional emission reductions from any stationary sources. It is important to note that the Kaiser Trentwood facility is under a federal consent decree and final judgement which will reduce PM–10 emissions from the facility in the future.

The final source of PM–10 impacting the Spokane nonattainment area is windblown dust. There are two principal sources of windblown dust: undisturbed land and agricultural fields. Ecology did not perform a RACM analysis for agricultural sources in the Spokane nonattainment plan. However, Ecology had previously submitted an analysis of RACM for agricultural sources for the Wallula, Washington, PM–10 nonattainment area which has similar windblown dust issues. In that SIP revision Ecology concluded that RACM is being applied for agriculture sources of PM–10 based on soil conservation measures required by the federal government's implementation of the United States Department of Agriculture's (USDA) Food Security Act (FSA) of 1985. EPA Title I preamble guidance suggests states ''rely upon the soil conservation requirements (e.g. conservation plans, conservation reserve) of the Food Security Act to reduce emissions from agricultural operations'' (see 57 FR 18072).

EPA proposes to determine that RACM is being applied to agricultural sources not only in the Spokane nonattainment area but throughout the region surrounding Spokane. Ecology did not evaluate the application of reasonable controls on undisturbed lands. This analysis will be accomplished after completion of the Columbia Plateau PM–10 Project.

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable (and would not constitute RACM) to require the implementation of potentially available control measures. 57 FR 13540. Further, EPA has indicated that for some sources in areas which demonstrate attainment, RACM does not require the implementation of otherwise available control measures that are not ''reasonably'' available because their implementation would not expedite attainment (See 57 FR 13543).

EPA is proposing to grant a temporary waiver of the attainment date to December 31, 1997, which will allow Ecology and EPA to determine conclusively the significance of anthropogenic and nonanthropogenic sources impacting Spokane. This action does not relieve the area from the requirement to implement RACM. In the Spokane situation EPA is proposing to determine that the major sources of PM–10 have been reasonably controlled. Thus, EPA thinks it would not be reasonable to require other smaller sources of PM–10 in the area to implement reasonably available control measures or technology. Further, EPA believes implementation of such additional controls in this area would not expedite attainment.

A more detailed discussion of the individual source contributions, their associated control measures and an explanation as to why certain available control measures were not implemented, can be found in the Spokane SIP revision. EPA has reviewed the State's explanation and associated documentation and is proposing to conclude that it adequately justifies the control measures being implemented.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will 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 (57 FR 13539). Alternatively, if the State does not submit a demonstration of attainment, the State must show that attainment by December 31, 1994 is impracticable (section 189(a)(1)(B)(ii).

The SIP utilized dispersion modeling for demonstrating attainment for all major sources of PM–10 except windblown dust. As mentioned in the emission inventory discussion above, Spokane has different sources that are major contributors at different times of

the year. Ecology provided an attainment demonstration which included each of the three source scenarios. The attainment demonstration included days when residential wood combustion emissions dominated the area, also days when unpaved roads were the major source, and days dominated by paved road emissions. The dispersion modeling analysis demonstrated attainment of the 24-hour standard. EPA proposes to find the attainment demonstration for the major PM–10 sources, except for windblown dust, is adequate.

The attainment evaluation does not address the windblown dust issue including the anthropogenic and nonanthropogenic mix. In the 1994, Spokane SIP submittal, Ecology demonstrated attainment of the annual and 24-hour PM–10 standards for all sources of PM–10 except windblown dust by December 31, 1994. Ecology did not address exceedences of the 24-hour standard that were primarily due to windblown dust. As mentioned previously, EPA is proposing to temporarily set aside certain SIP requirements for windblown dust sources, including the attainment demonstration.

Since EPA is proposing to grant a temporary, three year waiver of the attainment date, EPA is also proposing that the approval or disapproval of the attainment demonstration for windblown dust PM–10 exceedences, be deferred until after expira-tion of the temporary waiver. EPA proposes to make a final decision on the attainment status and classification of the area after the temporary waiver expires on December 31, 1997. The alternative decisions include, but are not limited to, reclassi-fying the area to a serious PM–10 nonattainment area; applying the May 30, 1996, Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, regarding ''Areas Affected by PM–10 Natural Events; or granting the area a permanent waiver. EPA invites comments on these possible approaches.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42).

The relatively small contribution of stationary sources in the Spokane nonattainment area suggests that stationary sources of precursors provide an insignificant contribution to the Spokane ambient PM–10 concentration. This conclusion is also supported by limited receptor analysis conducted in 1993. Based on that information Ecology concluded that the only major stationary source of PM–10 precursors, Kaiser-Mead, does not contribute significantly to PM–10 levels.

EPA is proposing to grant the area an exclusion from PM–10 precursor control requirements authorized under section 189(e) of the act. Note that while EPA is proposing to make a general finding for this area, this proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three (3) years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In the Spokane situation, EPA is proposing to approve the reasonable further progress requirement for all significant sources of PM–10 except windblown dust. The dispersion modeling conducted by Ecology indicates that the 24-hour standard was attained in 1994 and air quality will be maintained below the standard until at least 1997 (except for windblown dust). As stated previously, EPA is proposing to grant a temporary waiver of the attainment date for the Spokane area for windblown dust sources. If granted, the area would not be required to meet RFP for windblown dust sources. In 1998 EPA will determine the designation and classification of the Spokane area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by Ecology and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

Ecology's and SCAPCA's control measures and regulations for control of particulate matter, which are contained in the SIP, are addressed above under the section headed ''RACM (including RACT).'' These control measures apply to the types of activities identified in that discussion including, for example, fugitive emissions from unpaved roads. The SIP provides that the affected activities will be controlled throughout the entire nonattainment area.

The Clean Air Act requires that all the applicable RACM provisions be implemented by December 10, 1993 (section 189(a)(1)(C). In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information document (TSD).

EPA is proposing to approve a December 12, 1991, SCAPCA Order No. 91–01. This order provides for the use of an alternate opacity limit for the Kaiser-Trentwood aluminum facility. EPA has evaluated information presented in the 1994 SIP revision for Spokane and other information and has concluded that the order will not have a significant impact on the ambient air quality in Spokane. EPA is further proposing to approve SCAPCA Order #96–03, Order #96–04, Order #96–05, and Order #96–06, for the Kaiser-Trentwood facility which will significantly lower the allowable emissions from the facility. The new allowable emission totals are the same as the amount used by Ecology in the attainment demonstration. Upon final approval by EPA as part of the SIP, the orders will be federally enforceable.

The TSD contains further information on enforceability requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; malfunction provisions; excess emission provisions; correctly cited references of

incorporated methods/rules; and reporting and recordkeeping requirements. Ecology and SCAPCA have the primary responsibility for implementing the measures in the plan. Ecology and SCAPCA have compliance inspectors and EPA considers the staffing level adequate to assure that the RACM provision in the Spokane attainment plan are fully implemented. As a necessary adjunct of its enforcement program, Ecology and SCAPCA also have broad powers to adopt rules and regulations, issue orders, require access to records and information, and receive and disburse funds.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–44). Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

Ecology submitted several measures that were identified as contingency measures. As with their control measures necessary to demonstrate attainment, Ecology and SCAPCA, adopted contingency measures for each of the three significant sources of PM–10 other than windblown dust. The contingency measures include additional treatment of unpaved roads, early implementation of paved road controls (additional reductions from what is included in the attainment program) and banning the use of uncertified stoves if an exceedence is primarily due to residential wood combustion sources.

The plan does not contain a contingency measure for windblown dust. Since the action proposed in this Federal Register notice would allow for a temporary extension of the attainment date for windblown dust sources, EPA proposes to take no action on a contingency measure for windblown dust until after the temporary waiver has elapsed.

III. Implications of Today's Action

EPA is proposing to approve those portions of the 1994 PM–10 attainment plan for Spokane submitted by Ecology to control significant sources of PM–10 except for windblown dust, as meeting RACM and demonstrating attainment of the 24-hour standard by the statutory deadline of December 31, 1994. EPA is further proposing to grant a temporary waiver of the December 31, 1994, attainment date to December 31, 1997 for windblown dust-caused exceedences of the PM–10 24-hour standard. If this action is finalized, Ecology and SCAPCA will continue to implement the adopted control measures and Ecology will determine the significance of anthropogenic and nonanthropogenic windblown dust sources impacting the Spokane PM–10 nonattainment area. If any of the non-windblown dust sources cause any exceedences of the PM–10 24-hour standard the area could be reclassified to a serious PM–10 nonattainment area. When Ecology has completed its analysis on windblown dust, and/or the temporary waiver expires, EPA will make a final determination of the nonattainment status of the Spokane area. EPA is also proposing to approve several SCAPCA orders, including an alternate opacity order for the Kaiser-Trentwood facility in Spokane. Finally, EPA is proposing to grant an exclusion from precursor control requirements as described in part II. 5 of this notice.

IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the beginning of this notice, EPA will consider any comments postmarked by August 8, 1996.

V. Administrative Review

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on 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. section 7410(a)(2).

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

EPA has determined that the proposed 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 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.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2224), 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 27, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–17459 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[CO43–2–6865; CO43–1–6931; FRL–5532–07]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver and Longmont; Clean Air Act Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency today proposes approval of the State Implementation Plan (SIP) revisions submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for carbon monoxide (CO). The implementation plan revisions were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes proposed approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP. It also includes proposed reclassification of the Denver CO nonattainment area from Moderate to Serious. The rationale for the approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by August 8, 1996.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director of Air Programs (8P2–A), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186–187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Denver and Longmont CO SIPs, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

This Federal Register document specifically addresses several requirements of the 1990 CAAA which were required to be submitted no later than November 15, 1992, and which the State did not submit by that date. These requirements include an attainment demonstration, contingency measures and, for Denver, a vehicle miles travelled forecasting and tracking program and transportation control measures. EPA made a formal finding that the State had failed to submit these SIP revisions in a letter to Governor Roy Romer dated January 15, 1993. This Federal Register document also addresses revisions to Regulations 11 and 13, submitted by the State of Colorado to implement portions of the control strategy relied upon by the attainment demonstration.

Section 187(a)(7) required those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) to submit, among other things, an attainment demonstration by November 15, 1992, demonstrating that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. Finally, a vehicle miles travelled forecasting and tracking program is required by Section 187(a)(2)(A), and transportation control measures are required for Denver by Section 187(a)(2)(B). These requirements are discussed in more detail below and in the Technical Support Document for this proposed action.

Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 CAAA. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. As a result, EPA Region VIII recommended that the Governor designate this area nonattainment, and on March 15, 1991, the Governor submitted a nonattainment designation for this area that was later codified by EPA at 40 CFR Part 81. Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. Contingency measures under Section 172(c)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 11, 1994 and July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittals for Denver and Longmont addressed the outstanding CAA requirements discussed above, as well as other CAA mandates. The July 11, 1994 CO SIP revision for Denver was developed primarily by the Colorado Department of Health's Air Pollution Control Division (APCD), the Colorado Air Quality Control Commission (AQCC), and the Regional Air Quality Council (RAQC), which represents local government and citizen interests. The July 13, 1994 CO SIP revision for Longmont was developed primarily by the APCD, in consultation with the City of Longmont.