(9) Comment No. CP1, Docket No. 92P–0309, Dockets Management Branch.

(10) Comment No. CP1, Docket No. 94P–0215, Dockets Management Branch.

(11) Comment No. CP2, Docket No. 94P–0215, Dockets Management Branch.

(12) Comment No. CP1, Docket No. 95P–0145, Dockets Management Branch.

This advanced notice of proposed rulemaking is issued under sections 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371) and under the authority of the Commissioner of Food and Drugs.

Dated: September 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–25259 Filed 10–2–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–095–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Illinois regulatory program (hereinafter the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerned addition of a definition for the term ''Generally accepted accounting principles'' to title 62 of the Illinois Administrative Code (IAC) regulations pertaining to self-bonding. Illinois is withdrawing the amendment at its own initiative.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION: By letter dated July 16, 1996 (Administrative Record No. IL–1804), Illinois submitted a proposed amendment to its program pursuant to SMCRA. The amendment concerned addition of a definition for the term ''Generally accepted accounting principles'' at 62 IAC 1800.23(a). Illinois submitted the proposed amendment at its own initiative.

On July 30, 1996, OSM announced receipt of and solicited public comment on the proposed amendment in the Federal Register (61 FR 39612). The public comment period ended on August 29, 1996.

On September 20, 1996 (Administrative Record No. IL–1811), Illinois requested that the proposed amendment be withdrawn. Illinois has decided not to add this definition to its regulations at this time. Therefore, the proposed amendment announced in the July 30, 1996, Federal Register is withdrawn.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 25, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–25340 Filed 10–2–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–002; CO–001–003 and CO–001–004; FRL–5628–8]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Denver, CO, and the Denver Mobile Source Emissions Budgets for PM_{10} and NO_X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes approval of the state implementation plan (SIP) revision submitted by Colorado on March 30, 1995, to achieve 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}) in the Denver area, including: Control measures; technical analysis (*e.g.*, emission inventory, and attainment) and other Clean Air Act (Act) SIP requirements. The SIP revision was submitted to satisfy certain Federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Denver and, among other things, contains enforceable control measures.

EPA also proposes to approve the PM_{10} and NO_X mobile source emissions budgets for Denver that were submitted by the Governor on July 18, 1995 and April 22, 1996, respectively.

DATES: Comments on the actions proposed in this document must be received in writing by December 2, 1996.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Label the comments as comments addressing the Denver PM_{10}, PM_{10} emissions budget or NO_X emissions budget SIPs.

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 Program, 999 18th Street, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Program, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80220–2405 or by phone at (303) 312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

The Denver, Colorado area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); and 40 CFR 81.306 (specifying PM_{10} nonattainment designation for the Denver metropolitan area). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in Part D, Subparts 1 and 4, of Title I of the Act.[2]

The 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)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 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 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.

of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Colorado moderate PM_{10} SIP for the Denver nonattainment area, EPA is applying its interpretations considering the specific factual issues presented.

Those States containing initial moderate PM_{10} nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following plan provisions 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 later date. States with initial moderate PM_{10} nonattainment areas were required to submit a new source review (NSR) 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)). On January 14, 1993, the State submitted regulation revisions for the construction of new and modified major stationary sources. On August 18, 1994, EPA partially approved the State's NSR program for the Denver PM_{10} nonattainment area because the State had not yet submitted NSR provisions for sources of PM_{10} precursors (i.e., NO_X and SO_2) in the Denver area (see 59 FR 42300). On August 25, 1994, Colorado submitted additional NSR provisions for precursor emissions. EPA will be acting on that SIP submittal in a separate notice.

States were also required to submit contingency measures for PM_{10} moderate nonattainment areas by November 15, 1993. The contingency measures for the Denver PM_{10} nonattainment area were initially submitted by the Governor on December 9, 1993. However, those measures were later incorporated into the revised March 30, 1995 PM_{10} SIP. Therefore, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA is taking action on the contingency measures SIP submittal in a separate rulemaking action.

On June 7, 1993, the Governor submitted a SIP for Denver to EPA which was intended to satisfy those elements due November 15, 1991. On December 20, 1993, EPA proposed to conditionally approve that SIP and also proposed to approve the SIP's control measures for their limited purpose of strengthening the Colorado SIP (58 FR 66326). On July 25, 1994, EPA granted limited approval of the control measures for the limited purpose of strengthening the SIP (59 FR 37698).

During review of the technical information supporting the June 1993 SIP, EPA examined information which raised concern about the accuracy of the SIP's attainment demonstration. The SIP's technical support documentation suggested that the contribution from PM_{10} ''precursors'' (*i.e.*, nitrogen oxides and sulfur dioxides) in the base year winter season may have been underestimated. Since the attainment demonstration provided with that SIP predicted a value of 149.9 µg/m3 over 24 hours, virtually any increase in precursor PM_{10} levels would result in predicted violations of the 24-hour standard.

In the December 20, 1993, proposed rulemaking action, EPA requested public comment on it's proposal to grant conditional approval of the SIP in light of the precursor issue. EPA reviewed the information submitted during the public comment period and concluded that precursors were underestimated by 5.4 µg/m3. Based upon this finding, EPA delayed taking final action on the proposed conditional approval to allow the State an opportunity to develop additional controls to offset this increase. On March 30, 1995, the Governor submitted a SIP revision intended to provide controls to offset the increase in precursor emissions and provide credible attainment and maintenance demonstrations. On July 18, 1995, and April 22, 1996 the Governor submitted additional revisions to the SIP which establish mobile source emissions budgets for PM_{10} and NO_X. The conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). EPA is taking three actions with this document.

1. EPA is proposing to approve the revised Denver PM_{10} SIP, as adopted by the Colorado Air Quality Control Commission (AQCC) October 20, 1994 with an amendment on December 15, 1994, and submitted by the Governor of Colorado on March 30, 1995. This submittal contains, among other things, several control measures, regulation and permit revisions and attainment and three-year maintenance demonstrations. The State's submittal demonstrates attainment of the PM_{10} NAAQS by December 31, 1994 [3], with continued maintenance of the standard through December 31, 1997.

2. EPA is proposing to approve the Denver PM_{10} mobile source emissions budget contained in the SIP revision adopted by the AQCC on February 16, 1995, and submitted by the Governor on July 18, 1995.

3. EPA is proposing to approve the Denver NO_X mobile source emissions budget adopted by the AQCC on June 15, 1995, and submitted by the Governor on April 22, 1996.

II. This Action

A. Analysis of March 30, 1995 Denver PM_{10} SIP 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

[3] The Clean Air Act calls for attainment as expeditiously as practicable but no later than December 31, 1994. Section 188(c)(1). The State's submittal sometimes refers to December 31, 1994 as the attainment date and at other times implies 1995 as the attainment date. EPA interprets that when the State refers to attainment by 1995 it means attainment by January 1, 1995. EPA is proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates and the fact that, at times, the State refers to the attainment date as December 31, 1994. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State is projecting attainment in the Denver Metropolitan nonattainment area.

hearing.[4] 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). EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. 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.

After providing reasonable notice, the AQCC held a public hearing on October 20, 1994, to entertain public comment on the implementation plan for Denver. The plan was adopted following the public hearing. The plan was further amended after a properly noticed public hearing of the AQCC on December 15, 1994. On March 30, 1995, the Governor signed and submitted the SIP revision to EPA. The SIP was deemed complete by operation of law six months following submission of the plan by the Governor.

2. Accurate 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 in the nonattainment area.[5] The emissions inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area (see, *e.g.*, section 110(a)(2)(K)). Because the submission of such inventories is a necessary adjunct of an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the SIP revision containing the demonstration (see 57 FR 13539).

Colorado submitted an emissions inventory for base year 1989 (based on actual emissions) and an emissions inventory for attainment year 1995[6] (based on allowable emissions). The winter 1989 and 1995 inventories are intended to represent all sources of primary PM_{10}, as well as all sources of the PM_{10} precursors (nitrogen oxides and sulfur dioxide (NO_X and SO_2)). The precursor emissions are important because filter analyses performed in conjunction with chemical mass balance modeling indicated that a significant portion (35%) of the PM_{10} monitored consisted of secondary ammonium sulfate and nitrate.

The wintertime 1989 base year inventory identified re-entrained road dust (44%), wood burning (18%) and street sanding (8.5%) as the principal contributors to primary PM_{10}. Other primary PM_{10} sources include unpaved road dust contributing 12.5% and point sources contributing 4% of the total primary PM_{10} inventory.

The secondary emissions, 35% of total PM_{10}, are divided between NO_X and SO_2. For wintertime 1989 base year NO_X, stationary sources contribute 40% of the total NO_X emissions with vehicle exhaust at 41% and natural gas from residential and commercial usages at 11%. The prime sources of SO_2 include stationary sources with 92% of the total SO_2 emissions and vehicle exhaust with 5%.

The wintertime 1995 attainment year inventory identified re-entrained road dust (47%), wood burning (6%) and street sanding (7%) as the principal contributors to primary PM_{10}. Other primary PM_{10} sources include unpaved road dust contributing 12% and point sources contributing 9% of the total primary PM_{10} inventory.

The secondary emissions, 35% of total PM_{10}, are divided between NO_X and SO_2. For the wintertime 1995 attainment year NO_X, stationary sources contribute 44% of the total NO_X emissions with vehicle exhaust at 38% and natural gas from residential and commercial usages at 10%. The prime sources of SO_2 include stationary sources with 97% of the total SO_2 emissions and vehicle exhaust with 1%.

EPA is proposing to approve the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for the Denver area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the act. For further details see the Technical Support Document (TSD) prepared for this action which is available for public review at the address indicated at the beginning of this notice.

3. RACM (Including RACT)

As noted, 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 RACM (including RACT) (see 57 FR 13539–13545 and 13560–13561).

On July 25, 1994, EPA took final rulemaking action to approve controls found in the June 7, 1993 Denver PM_{10} SIP submittal. That action approved controls for their limited ability to strengthen the SIP under sections 110(k)(3) and 301(a) of the Act. In that rulemaking action, EPA found that the control measures appeared to satisfy the specific requirements to implement RACM/RACT. However, due to the State's need to fulfill a commitment to revise two stationary source permits and due to the question of whether the attainment demonstration was reasonable in light of questions regarding precursor contributions to the attainment demonstration, EPA did not take definitive action to find that the measures met the RACM/RACT requirements. Following the June 1993 submittal, the State fulfilled the commitment, and EPA determined that the precursor contribution to the PM_{10} levels was underestimated.

The March 30, 1995 SIP submittal contains an evaluation of the emissions reduction programs found in the June 1993 submittal, and enhancements to those programs needed to demonstrate attainment and maintenance. These enhancements were needed due to the underestimation of the precursor contribution in the June 1993 demonstration. EPA is now able to make RACM/RACT determinations for the control programs contained in the March 1995 SIP submittal.

The March 30, 1995 SIP revision identifies four source categories as major contributors to the PM_{10} nonattainment problem in Denver. The following Table identifies the source categories and their respective control measures implemented across the nonattainment area, as well as measures exclusive to the Central Business District (CBD). Generally, the CBD is where exceedances of the standard have occurred and, therefore, is an important focus for the implementation of some of the control measures.

When comparing the 1989 base year actual emissions inventory to the 1995 attainment year allowable emissions inventory for the entire nonattainment area there is actually an increase in PM_{10} emissions. This is due to the fact that the suburban area of Denver has grown over the past several years. Nevertheless, the State demonstrates timely attainment area-wide even with these emissions increases.

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

[5] 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.

[6] See footnote 3.

To show timely attainment of the standard, woodburning controls, street sanding/sweeping controls and reductions in stationary source emissions had to be developed. As a result of these controls, as well as the other control strategies (described further in the TSD), the CBD shows a total 9.45% reduction (269.7 tons/year) from base year 1989 (actuals) to the 1995 attainment year (allowables), and demonstrates timely attainment of the standard.

DENVER PM_{10} SIP CONTROL STRATEGIES

Source category	Control strategy
Residential Wood Burning (Area-wide controls)	1. High pollution day wood burning restriction program and revisions. 2. Requirements that new or remodeled construction use a new cleaner wood burning approach. 3. Voluntary conversion program from existing wood burning to cleaner burning technology. 4. New stove/fireplace insert certification. 5. Prohibit resale of used, uncertified stoves.
Street Sanding and Sweeping of Paved Streets (Area-wide and CBD controls).	1. Material specifications for street sanding material. 2. Local management plans. 3. Enhanced street sanding and sweeping in Central Denver and the I–25 Corridor. 4. City/County of Denver and CDOT reduce amount of street sanding material in the Denver CBD and central Denver by 50% from base year 1989.
Stationary Sources (Area-wide controls)	1. Emission limits at Purina Mills. 2. Emission limits at Electron Corporation. 3. Regulation limits for precursor emissions at Cherokee, Arapahoe and Valmont power plants. 4. Emission limits for NO_X and SO_2 at Coors Glass and Coors Brewery.[7] 5. Emission limits at Conoco Refining. 6. Restrictions on oil use.
Mobile Sources (Area-wide controls)	1. Light duty vehicle, light duty truck NO_X standards. 2. Urban bus particulate standards. 3. Diesel fuel sulfur limits. 4. Regulation #11 Enhanced I/M. 5. Regulation #12 Diesel I/M. 6. Regulation #13 Oxy Fuels. 7. MAC light rail line. 8. Express bus service from Denver to new Denver International Airport. 9. CommuterCheck program. 10. ECOPass. 11. CU Student bus pass.

[7] Emission limits for Coors Glass increase, while the limits for Coors Brewery decrease. While EPA believes these revisions to the emissions limits are acceptable for meeting RACM/RACT requirements, EPA's proposed action herein regarding these limits does not in any manner relieve these companies of the obligation to comply with any nonattainment NSR permitting requirements that might apply to such changes in emissions limits.

A more detailed discussion of the individual source contributions and their associated control measures (including available control technology) can be found in the TSD. EPA has reviewed the State's documentation and proposes to conclude that it adequately justifies the control measures that will be implemented. Therefore, by this document, EPA is proposing to approve the Denver PM_{10} plan submitted by the Governor on March 30, 1995, as meeting the RACM (including RACT) requirement.

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). Alternatively, the State must show that attainment by December 31, 1994, is impracticable. Colorado conducted an attainment demonstration using dispersion modeling for primary PM_{10} and proportional rollback modeling analysis for secondary particulate concentrations for the Denver area. This demonstration indicates that the NAAQS for PM_{10} will be attained in Denver by December 31, 1994, at a modeled concentration of 147.8 $\mu g/m^3$ and will be maintained in future years. The 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6).

There have never been exceedances of the annual average PM_{10} standard in the Denver metro area; therefore, an attainment analysis of the annual standard was not performed. Finally, EPA believes that the controls adopted to protect the 24-hour standard are sufficient to maintain the annual standard. The control strategy used to achieve the 24-hour standard is summarized in the section above titled ''RACM (including RACT).'' For a more detailed description of the attainment demonstration and the control strategy, see the TSD accompanying this document.

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) (57 FR 13539–13540 and 13541–13542).

An analysis of air quality and emissions data for the Denver

nonattainment area demonstrates that exceedances of the PM_{10} NAAQS are attributable both to direct particulate matter emissions from wood burning, street sanding/sweeping, mobile sources, and stationary sources, and to mobile and stationary source precursor emissions. Further, the dispersion and chemical mass balance modeling for base year 1989 identified precursor emissions of NO_X and SO_2 as contributing 35% to the ambient PM_{10} concentration. Consequently, major stationary sources of these precursors are required to comply with all control requirements of the PM_{10} nonattainment area plan which apply to major stationary sources of PM_{10} (i.e, RACT for moderate areas and NSR permitting control requirements).

As indicated above, EPA proposes to approve the State's submittal as meeting RACM (including RACT). EPA's proposed approval of RACT extends to those control requirements applicable to the major stationary sources of PM_{10} precursors. Specifically, EPA proposes to find that the emission limits and restrictions on oil use are reasonable and approvable because they provide for timely attainment of the PM_{10} NAAQS. Additionally, these measures will help ensure maintenance of the NAAQS.

On August 25, 1994, Colorado submitted NSR provisions for precursors in the Denver nonattainment area. EPA is acting on that SIP submittal in a separate notice. Further discussion of the data and analyses addressing the contribution of precursor sources in this area is contained in the TSD accompanying this document.

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 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994 (see sections 171(1) and 189(c) of the Act). RFP 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 considering the quantitative milestones and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the PM_{10} NAAQS by December 31, 1994 (see section 171(1) of the Act). EPA is proposing to approve the PM_{10} SIP for the Denver nonattainment area as demonstrating attainment by December 31, 1994. EPA is also proposing to approve the submittal as satisfying the initial quantitative milestone requirement[8] and proposes to find that the emissions reductions projected meet RFP.

Further, the State has demonstrated that continued maintenance of the standard will be achieved through implementation of the control measures found in the SIP. The State's roll-forward analysis indicated that the highest predicted concentration is 149.9 $\mu g/m^3$. Concentrations over 150 $\mu g/m^3$ violate the NAAQS.

The assurance that the initial milestone and reasonable further progress will be achieved is based upon the State implementing the particular control measures contained in the SIP which are addressed in section II. A. 3. ''RACM (including RACT)'' of this document. Consequently, EPA is approving these control measures as meeting RACM (including RACT) and thus is also proposing to approve the SIP as meeting the initial milestone and reasonable further progress requirements.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) signed by 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) of the Act).

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. In addition to the specific authority cited under descriptions of the control measures, the State's Attorney General has provided an opinion citing the authorities contained in the Colorado Air Pollution Prevention and Control Act which provide the State with the authority to enforce state air regulations against local entities, and enforce local air pollution requirements when local entities fail to do so. This is consistent with section 110(a)(2)(E) of the Act.

The Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the AQCC, as provided for in C.R.S. 25–7–111. In addition, C.R.S. 25–7–115 provides that the APCD shall enforce compliance with the emission control regulations of the AQCC, the requirements of the SIP, and the requirements of any permit. Civil penalties of up to $15,000 per day per violation are provided for in C.R.S. 25–7–122 for any person in violation of these requirements, and criminal penalties are provided for in C.R.S. 25–7–122.1. Thus, the APCD has adequate enforcement capabilities to ensure compliance with the Denver PM_{10} SIP and the State-wide regulations.

The particular control measures contained in the SIP apply to the types of activities identified earlier and in the following discussion, including: residential wood burning; street sanding/sweeping; mobile sources; and reductions of emissions from stationary sources. As explained in the following discussion, the control measures are enforceable. Accordingly, EPA is proposing to approve the control measures. The TSD contains further information about enforceability requirements, including a discussion of the personnel and funding intended to support effective implementation of the control measures.

a. Residential Wood Burning Controls. 1. High Pollution Day Wood Burning Restrictions: Regulation No. 4 requires the APCD to implement and enforce wood burning restrictions in areas which did not have local enforceable ordinances before January 1, 1990. To ensure proper enforcement, the APCD contracts with local health departments to execute the enforcement provisions of the Regulation. In communities where local ordinances regulating wood burning were in place prior to January 1, 1990, the local government is responsible for enforcement of its ordinance, including issuing fines, penalties, warnings, and conducting inspections. (Local ordinances cover approximately 85% of the Denver metro area.) The State has authority to enforce local ordinances in place prior to January 1, 1990, if local governments fail to do so.

2. Clean Wood Burning Technology for New or Remodeled Construction: Beginning on January 1, 1993, state law

[8] The emissions reduction progress made prior to the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement (57 FR 13539). The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

requires that new or remodeled fireplaces in new or remodeled structures must be gas appliances, electric devices, or low emissions fireplace inserts meeting the EPA Phase II New Source Performance Standard (NSPS) or State adopted Phase III requirements. (EPA's Phase II and Colorado's Phase III requirements are equivalent.) Under the law, the fireplace restrictions must be adopted as building code revisions by each local government and be enforced through the normal code enforcement programs of each community. This requirement became effective on January 1, 1993.

3. Encourage Conversion of Existing Wood Burning Units to Cleaner Burning Technology: Legislation passed in 1992, required that the lead air quality planning organization (the Regional Air Quality Council) develop and implement a financial incentive program to provide subsidies toward the purchase of new cleaner technologies. Additionally, retailers must report the number of purchases of certified stoves or inserts, and gas or electric fireplaces to the Colorado Department of Revenue and submit a $1 fee for each certification of conversion. Under the program, the Department of Revenue is responsible for tracking conversions to cleaner technologies, reported by retailers, and reporting the status of the conversion program to the AQCC.

4. New Stove and Fireplace Insert Certification: State law prohibits the resale and/or installation of any uncertified wood burning device in the metro Denver area after January 1, 1993. The law is enforced through the building code provisions of the various local governments within the Denver area.

b. Street Sanding and Cleaning Controls. 1. Material Specifications for Street Sanding Material: Regulation No. 16 sets specifications for fines and durability of new and recycled sanding materials, and requires that sand providers and users conduct testing and report the quality of sanding materials and amounts used during the winter season to the APCD. The Regulation is enforced through authority provided to the State by statute.

2. Local Management Plans: Regulation No. 16 requires State and local agencies that apply street sand to develop and submit a plan for reducing their use of sand by 20% from 1989 base year levels. The agencies are required to adopt ordinances or resolutions to support the plans, to submit the plans by September 30, 1993, and to implement the plans by November 1, 1993. The agencies are also required to submit annual reports to the APCD documenting the reductions in sand use achieved through implementation of the plans. The Regulation is enforced through authority provided to the State by statute.

3. Further Enhancements to Street Sanding and Sweeping Practices in the Denver CBD and Central Denver Area: Regulation No. 16 also requires that the City and County of Denver reduce the amount of street sanding material applied to all regional arterials, principal arterials and main arterials within the Denver CBD by a total of 50 percent from 1989 base sanding amounts for these roadways. The revision also requires that the Colorado Department of Transportation (CDOT) increase its reduction in applied street sanding material from 20 percent to an equivalent 50 percent on state-maintained freeways and ramps within the Denver CBD. CDOT and the City/County are allowed to implement an alternative plan to achieve an equivalent reduction through increased sweeping and use of alternative deicers and/or sanding material, subject to review and approval by APCD. EPA will review and concur by letter on the alternative plans prior to APCD approval. EPA will not consider such plans valid absent EPA concurrence. The Regulation is enforced through authority provided to the State by statute.

c. Mobile Source Emission Reduction Measures. The SIP contains a variety of mobile source control measures included in the 1990 Clean Air Act Amendments in addition to the street sanding and sweeping controls. These mobile source measures include the new light-duty vehicle, light-duty truck NO_X standards, urban bus particulate standards, and diesel fuel sulfur limitations. Particulate emission reductions are also incorporated for three existing State programs, the enhanced inspection and maintenance program, the diesel inspection and maintenance program, and the oxygenated fuels program (Regulations 11, 12 and 13). These programs were developed independently from the PM_{10} SIP but are included because of their particulate matter reduction benefit. The Act-required programs are enforced by the federal government while the State regulations are enforced by the APCD.

The SIP also includes a number of transportation control measures to slow growth in vehicle miles traveled. These are not measures that were developed specifically for the SIP, but measures that are already planned or underway in the Denver area and accounted for in the mobile source modeling for the attainment year. These measures are assumed to be implemented by 1995 and have been included in the transportation modeling supporting the attainment and maintenance demonstrations. The Regional Transportation District (RTD) is implementing these measures through its Transit Development Plan which has been adopted by the RTD Board of Directors.

The measures for which the SIP takes credit within the transportation modeling include the MAC Light Rail Line and additional express bus service to the new Denver International Airport. Also, several programs aimed at attracting new ridership are being implemented. These new programs include the CommuterCheck program, ECOPass, and the CU Student Pass Program. Through the implementation of these and other marketing programs, transit ridership is expected to increase by 20% between 1989 and 1995. A complete description of the measures included in the SIP is found in section VIII of the SIP.

The Act requires that all federally funded transportation measures be included in a conforming Regional Transportation Plan and Transportation Improvement Program (TIP). Because the implementation of these measures must conform to the SIP, any changes to the federally funded measures included in the attainment demonstration must go through a conformity analysis before they can be implemented. The existing TIP has been found to conform with the SIP.

d. Stationary Source Measures. To control emissions from stationary sources, APCD enforces both permit limitations and regulations through authority provided under State statute. See the discussion under section II.D. contained in the TSD for more information on the permit and regulation revisions at stationary sources.

Rules and controls relating to woodburning, street sanding/cleaning, mobile sources, and stationary sources are in effect now. Colorado has a program that will ensure that the measures contained in the Denver PM_{10} SIP are adequately enforced. EPA proposes to find that the air enforcement program is adequate. The TSD contains further information on enforceability responsibilities, requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures (see

generally 57 FR 13510–13512 and 13543–13544). These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. 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. Colorado chose to submit the contingency measures separately from the PM_{10} SIP requirements addressed in this document. The contingency measures for the Denver PM_{10} nonattainment area were initially submitted by the Governor on December 9, 1993. However, those measures were later incorporated into the revised March 30, 1995 PM_{10} SIP. Therefore, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA is taking action on the contingency measures SIP submittal in a separate rulemaking action.

B. Denver PM_{10} Emissions Budget

On February 16, 1995, the AQCC adopted the Denver PM_{10} mobile source emissions budget into the Colorado ''Ambient Air Quality Standards'' following a properly noticed public hearing. On July 18, 1995, the Governor submitted a SIP revising certain Chapters of the Denver PM_{10} SIP submitted on March 30, 1995, to include the Denver PM_{10} mobile source emissions budget.

The EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565 and EPA's completeness criteria for SIP submittals set out at 40 CFR Part 51, Appendix V). EPA did not make its completeness determination within six months of receiving the submission. Thus, the submittal was deemed complete by operation of law.

The Denver mobile source PM_{10} emissions budgets are being used to assess the conformity of transportation plans, transportation improvements programs, and where appropriate, federally funded projects for the applicable periods indicated. The Denver PM_{10} mobile source emissions budget was set for 1995 (41.2 tons/day), 1996–1997 (44 tons/day), 1998–2005 (54 tons/day) and 2006 and beyond (60 tons/day). (The State was able to demonstrate attainment and maintenance of the PM_{10} standard using the 1995 and 1996–1997 PM_{10} mobile source emissions budgets.) The State adopted the PM_{10} revisions to the Ambient Air Standards Emissions Budget to make them state enforceable. EPA is proposing that the PM_{10} emissions budgets are approvable. (See the TSD prepared for this action for more information.)

C. Denver NO_X Emissions Budget

On April 22, 1996, the Governor submitted a SIP which contained an amendment to the Colorado ''Ambient Air Quality Standards.'' The amendment incorporated the NO_X emissions budget for the Denver PM_{10} nonattainment area and was adopted by the AQCC following a properly held public hearing on June 15, 1995.

EPA reviewed the documentation as provided in accordance with section 110(k)(1) and 57 FR 13565 and EPA's completeness criteria for SIP submittals set out at 40 CFR Part 51, Appendix V. EPA found the submittal complete, and advised the Governor of that finding in a letter on July 15, 1996.

The 1995 and beyond NO_X budget of 119.4 tons per day was used in the March 30, 1995 PM_{10} SIP. (The State was able to demonstrate attainment and maintenance of the PM_{10} standard using the NO_X mobile source emissions budget.) The State adopted the NO_X revisions to the Ambient Air Quality Standards Emissions Budget to make it state enforceable. EPA is proposing that the NO_X emissions budget is approvable. (See the TSD prepared for this action for more information.)

III. Proposed Action

EPA is proposing to approve the following: the revised Denver PM_{10} SIP submitted by the Governor of Colorado on March 30, 1995; the Denver PM_{10} mobile source emissions budget submitted by the Governor on July 18, 1995; and the Denver NO_X mobile source emissions budget submitted by the Governor on April 22, 1996.

The EPA is requesting comments on all aspects of this proposal. As indicated elsewhere in this document, EPA will consider any comments received by December 2, 1996 on the appropriateness of the proposed approval action on the Denver PM_{10} SIP, the Denver PM_{10} mobile source emissions budget, and the Denver NO_X mobile source emissions budget.

IV. 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.

V. Regulatory Flexibility

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 economic 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 sections 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed 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 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 (1976); 42 U.S.C. 7410(a)(2).

VI. Unfunded Mandates

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

EPA has also determined that this proposed action does not include a Federal 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. 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 form this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 13, 1996.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 96–25230 Filed 10–2–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[PA091–4029b; FRL–5613–2]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing a conditional interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York Counties. The intended effect of this action is to propose conditional interim approval of an I/M program proposed by the Commonwealth, based upon the Commonwealth's good faith estimate, which asserts that the Commonwealth's network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA. EPA is proposing a conditional approval because the Commonwealth's SIP revision is deficient with respect to the following requirements of the CAA and/or EPA's I/M program regulatory requirements: geographic coverage and program start dates, program evaluation, enhanced performance standard, test types, test procedures and emission standards, test equipment specifications and motorist compliance enforcement. If the Commonwealth commits within 30 days of this proposal to correct these deficiencies by a date certain within 1 year of the final interim ruling, and corrects the deficiencies by that date, then this interim approval shall expire pursuant to the NHSDA and section 110 of the CAA on the earlier of 18 months from final interim approval, or on the date of EPA action taking final full approval of this program. If such commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If the Commonwealth does make a timely commitment but the conditions are not met by the specified date within 1 year, EPA proposes that this rulemaking will convert to a final disapproval. EPA will notify the Commonwealth by letter that the conditions have not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA proposes that the Commonwealth's program must start by no later than November 15, 1997 in the five county Philadelphia and four county Pittsburgh areas and must start by no later than November 15, 1999 in the remaining 16 counties. EPA also proposes that if the Commonwealth fails to start its program as defined in this notice on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent by EPA to the Commonwealth. Elsewhere in today's Federal Register, EPA has published an interim final determination to defer sanctions until either this conditional interim approval is converted to a disapproval, the interim approval lapses, the full SIP is approved or the full SIP is disapproved.

DATES: Comments must be received on or before November 4, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn (215) 566–2176, at the EPA Region III address above or via e-mail at bunker.kelly@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The NHSDA establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require States to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with sections 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a State SIP revision, nor apply an automatic discount to a State SIP revision under sections 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50% credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a State's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for States to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA, continue to be required of those States submitting I/M SIP revisions under the NHSDA. The NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires States to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring States to submit these plans