ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO35–1–6190, CO41–1–6826, CO40–1–6701, CO42–1–6836; FRL–5664–5]

Clean Air Act Approval and Promulgation of State Implementation Plans; Colorado; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State implementation plan (SIP) revisions submitted by the Governor of Colorado on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. These submittals revised Colorado Regulation No. 3 and the Common Provisions Regulation pertaining to the State's new source review (NSR) permitting requirements. The submittals included revisions to make the State's NSR rules more compatible with its title V operating permit program, the addition of nonattainment NSR provisions for new and modified major sources of PM–10 precursors locating in the Denver PM–10 nonattainment area, a change from the dual ''source'' definition to the plantwide definition of ''source'' in the State's nonattainment NSR permitting requirements, and correction of deficiencies in the State's construction permitting rules. EPA proposed approval of these SIP revisions in the August 28, 1996 Federal Register, and no comments were received. EPA is approving these regulatory revisions because they provide for consistency with the Clean Air Act (Act), as amended, and the corresponding Federal regulations and guidance.

Also, EPA is revising 40 CFR 52.320 to list various sections of the Common Provisions Regulation in the ''Incorporation by reference'' section which EPA approved in past actions but which EPA did not list in the CFR. Last, EPA is deleting two NSR rule disapprovals listed in 40 CFR 52.324(c) and 52.343(a)(1) because the State has submitted, and EPA has approved, revisions addressing the disapprovals.

EFFECTIVE DATE: This action is effective February 20, 1997.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993, the Governor of Colorado submitted revisions to its construction permitting requirements in Regulation No. 3, including the State's nonattainment NSR provisions, for approval as part of the SIP. The State made numerous revisions to Regulation No. 3 as a result of the State's adoption of its title V operating permit program. In order to address deficiencies identified by EPA in the November 12, 1993 submittal, the State submitted additional revisions to Regulation No. 3 on September 29, 1994 and January 29, 1996. On August 25, 1994, the State also submitted PM–10 precursor NSR requirements applicable in the Denver PM–10 nonattainment area. In addition, on November 17, 1994, the State submitted a change in the definition of ''source,'' to switch from the dual definition of source to the plantwide definition of source in its nonattainment NSR rules. On August 28, 1996, EPA proposed to approve all of the revisions submitted, with the exception of Section IV.C. of Part A of Regulation No. 3 (see 61 FR 44264–44269). A sixty-day public comment period was provided, and no public comments were received on the proposal.

A. November 12, 1993, September 29, 1994, and January 29, 1996 Submittals

The revisions to the State's construction permitting program submitted on November 12, 1993 were adopted at the same time as the State's title V operating permit program, and the majority of the changes were adopted to make the two permitting programs work together and to allow for implementation of certain title V provisions. In addition, the State completely restructured Regulation No. 3 in the November submittal, so it is now divided into four parts:

1. Part A contains all definitions and provisions that apply to both the construction permit and operating permit programs. In this part, Colorado extended the administrative permit amendment provisions and some of the operational flexibility provisions of 40 CFR part 70 to the construction permit program;

2. Part B contains provisions which apply only to the construction permit program (including the nonattainment NSR and prevention of significant deterioration (PSD) programs). The State made revisions to allow certain aspects of the operating permit program to also apply to construction permits (e.g., combined permits and general permits) and to allow certain operational flexibility provisions to be implemented through the operating permit program without requiring construction permits (e.g., minor modifications, SIP equivalency, and other permit changes);

3. Part C contains provisions which apply solely to the State's operating permit program; and

4. Part D contains the Statements of Basis and Purpose for each revision to Regulation No. 3.

Parts A and B of Regulation No. 3 were submitted for approval as part of the SIP in the November 12, 1993 SIP submittal. Parts A and C of Regulation No. 3 were submitted for approval as part of the State's title V operating permit program on November 5, 1993.

In a September 19, 1994 letter to the State, EPA identified many deficiencies in the State's November 12, 1993 SIP submittal. In that letter, EPA identified deficiencies that needed to be addressed by the State before EPA would proceed to act on the November 1993 SIP submittal. EPA also recommended other revisions to provide for clarity in the State's permitting regulations.

Some of the deficiencies identified by EPA in the State's November 12, 1993 SIP submittal were also identified as deficiencies in the State's title V operating permit program which EPA required the State to address before EPA would proceed with interim approval of the State's title V program. Those deficiencies included (1) the fact that the State does not currently have a SIP-approved generic emissions trading program under which the trading described in Section IV.B. of Part A of Regulation No. 3 would be allowed, and (2) the allowing of alternative emission limits to be developed in permits when Section IV.D.1.i. of Part B of Regulation No. 3 did not adequately provide for this flexibility. The State adopted revisions intended to address these deficiencies (as well as to address other deficiencies in its title V operating permit program) on August 18, 1994 and submitted these revisions for approval in the SIP and for revision to its title V program on September 29, 1994.

EPA's review of the September 29, 1994 submittal found that the State adequately addressed these SIP/title V deficiencies by clarifying that Section IV.B. of Part A could only be implemented if the SIP included an EPA-approved trading program and by

deleting Section IV.D.1.i. of Part B. Based on this September 29, 1994 title V program revision (which also included correction of other title V program deficiencies), EPA granted interim approval of Colorado's operating permit program on January 24, 1995 (60 FR 4563).

On March 16, 1995, the State adopted further revisions to Regulation No. 3 intended to address the remaining deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Those revisions were submitted to EPA for approval on January 29, 1996 and include the following:

1. Changes to the definitions of ''lowest achievable emission rate (LAER)'' and ''net emissions increase'' to be consistent with the Federal definitions in 40 CFR 51.165(a)(1)(xiii) and 40 CFR 51.165(a)(1)(vi), respectively;

2. Consolidation of the State's definitions of ''air pollution source,'' ''stationary source,'' and ''new source'' so that only the term ''stationary source,'' which is consistent with the Federal definition, is used in the provisions of Regulation No. 3. The State also retained the definition of ''air pollution source'' because it reflects the definition found in State statute, but it is no longer used in Regulation No. 3;

3. The addition of a requirement to the definition of ''volatile organic compound (VOC)'' requiring EPA approval prior to use of any test method that is not an EPA reference test method;

4. Revisions to the administrative process in Section II.D.5. of Part A of Regulation No. 3 which allows for processing individual requests to exempt additional sources from the State's Air Pollution Emission Notice (APEN) requirements (and, consequently, from construction permit requirements) to require EPA approval of any new exemptions prior to use;

5. Revisions to the definition of ''surplus'' in Section V.C.10. of Part A of Regulation No. 3 to be consistent with EPA's Emission Trading Policy Statement (see 51 FR 43832, 12/4/86);

6. The addition of a provision to Section V.E. of Part A of Regulation No. 3 to ensure that new source growth cannot interfere with reasonable further progress towards attainment, in order to be consistent with section 173(a)(1)(A) of the Act;

7. The addition of a reference to the State's definition of ''net emission increase'' in Section V.I. of Part A of Regulation No. 3 (which discusses netting);

8. The addition of a requirement to Section IV.C.1. of Part B of Regulation No. 3 requiring the opportunity for public comment on permits for sources trying to obtain Federally enforceable limits on their potential to emit; and

9. The deletion of an exemption from nonattainment NSR requirements for sources undergoing fuel switches due to lack of adequate fuel supply (which is not allowed by EPA). EPA believes these regulatory revisions adequately address the deficiencies described above.

The State addressed some of EPA's other comments with an opinion from the State Attorney General's office dated July 3, 1995. Those comments and the State's responses are as follows:

1. EPA recommended adding definitions to Regulation No. 3 of ''begin actual construction,'' ''necessary preconstruction approvals or permits,'' and ''construction'' to be consistent with the Federal definitions. The State did not add these definitions because the State contends that its definitions of ''commenced construction,'' ''construction'' in the Common Provisions Regulation, and ''modification'' made the addition of these definitions unnecessary. After further review of the definitions referred to by the State, EPA agrees with the State's contention; and

2. Section IV.A. of Part A of Regulation No. 3 allows for alternative operating scenarios to be included in a construction permit, and this provision is based on the title V provision in 40 CFR 70.6(a)(9). However, in order to approve this provision for construction permits, EPA wanted assurances from the State that it would require compliance with all PSD or nonattainment NSR provisions (e.g., ambient air quality analysis or net air quality benefit) for every scenario allowed under the permit. The State's July 3, 1995 letter included an interpretation that compliance with all PSD or nonattainment NSR requirements (whichever was applicable) would be ensured under the provision in Section IV.A.2. of Regulation No. 3, which requires that the permit contain conditions to ensure each scenario meets all applicable Federal and State requirements. This satisfies EPA's concern.

EPA believes the comments discussed above were adequately addressed by the State in its revisions to Regulation No. 3 adopted on March 16, 1995 and its opinion from the State Attorney General's office. In addition, the State also addressed many of EPA's recommended revisions to Regulation No. 3, which EPA believes will help to strengthen the State's construction permit regulations.

EPA had also commented on Section IV.C. of Part A of Regulation No. 3, which provides for a construction permit (as well as a title V operating permit) to contain terms and conditions allowing for the trading of emissions decreases and increases under a permit cap, as long as certain conditions are met. This provision is based on the title V operating permit requirement in 40 CFR 70.4(b)(12)(iii), but EPA had concerns with the use of this provision in construction permitting. EPA is currently working on revisions to the Federal NSR regulations as part of the ''NSR Reform'' rules that would allow a source to establish a cap in its construction permit (termed a plantwide applicability limit or PAL) for NSR applicability under which emissions trading might be allowed. EPA proposed these NSR Reform rules for public comment on July 23, 1996 (see 61 FR 38250). Until the final EPA regulations are promulgated on this issue, EPA does not believe it is appropriate to approve the State's provision allowing trading under permit caps for construction permits, as EPA could be approving a rule that is inconsistent with the forthcoming Federal regulations. However, as discussed in the preamble to the July 23, 1996 rulemaking, Colorado may be able to consider the issuance of permits with emissions caps on a case-by-case basis under EPA's existing regulations (see 61 FR 38264).

EPA believes the State adequately addressed all of the deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Thus, EPA is approving the revisions to Regulation No. 3 submitted on November 12, 1993, September 29, 1994, and January 29, 1996. However, as discussed above, EPA is not acting on Section IV.C. of Part A of Regulation No. 3 at this time. For further details, see the Technical Support Document (TSD) accompanying this document.

B. August 25, 1994 SIP Submittal of Nonattainment NSR Rules for New and Modified Sources of PM–10 Precursors

When the Act was amended in 1990, it included, among other things, revised requirements for nonattainment areas which are set out in part D of title I of the Act. It also set out specific deadlines for submittals of SIP revisions addressing these new requirements, including the submittal of nonattainment NSR rules for which the deadlines varied depending on the type and designation of the nonattainment area. In response to those requirements, the Governor of Colorado submitted a

SIP revision on January 14, 1993 to bring the State's nonattainment NSR rules up to date with the requirements of the amended Act. EPA acted on that submittal on August 18, 1994 (59 FR 42500). Specifically, EPA approved the State's nonattainment NSR rules as meeting the requirements of the amended Act for the State's ozone and carbon monoxide areas, as well as for the Canon City, Pagosa Springs, and Lamar PM–10 nonattainment areas. However, EPA only partially approved the State's NSR submittal in that action for the Aspen, Telluride, and Denver moderate PM–10 nonattainment areas because the State had not submitted NSR regulations for new and modified major sources of PM–10 precursors and because, at the time of publication of the August 18, 1994 Federal Register document, EPA had not promulgated findings that such sources of PM–10 precursors did not contribute significantly to exceedances of the PM–10 national ambient air quality standards (NAAQS) in any of these three areas. [1] (See 59 FR 42503–42504 for further details.)

Since that August 18, 1994 Federal Register action, EPA has promulgated findings that sources of PM–10 precursors do not contribute significantly to PM–10 NAAQS exceedances in the Aspen and Telluride PM–10 nonattainment areas (see 59 FR 47092–47093, September 14, 1994, and 59 FR 47809, September 19, 1994, respectively), resulting in fully approved NSR provisions for these two PM–10 nonattainment areas. However, in the Denver moderate PM–10 nonattainment area, EPA has indicated that it does consider major stationary sources of PM–10 precursors (specifically oxides of nitrogen (NO_X) and sulfur dioxide (SO_2)) to contribute significantly to exceedances of the PM–10 NAAQS (see 58 FR 66331, December 20, 1993).

On February 17, 1994, the State adopted nonattainment NSR provisions for new and modified major sources of PM–10 precursors (defined as SO_2 and NO_X) in the Denver metropolitan moderate PM–10 nonattainment area. These Regulation No. 3 revisions were formally submitted to EPA for approval into the SIP on August 25, 1994.

As discussed in EPA's August 28, 1996 proposed rulemaking on the State's submittal, EPA believes the State's August 25, 1994 submittal of NSR revisions adequately addresses all of the PM–10 precursor NSR requirements in the Denver moderate PM–10 nonattainment area. Specifically, those requirements include requiring new major stationary sources (based on the 100 ton per year major source threshold) of PM–10 precursors in the Denver moderate PM–10 nonattainment area, as well as major modifications of PM–10 precursors (based on the major modification significance levels for SO_2 and NO_X), to meet all of the nonattainment NSR permitting requirements (including, among other things, application of lowest achievable emission rate (LAER) and the requirements to obtain emission offsets providing a net air quality benefit).

The State adopted specific provisions regarding NSR offsets for new and modified major stationary sources of PM–10 and PM–10 precursors, as follows: In Section V.F.1. of Part A of Regulation No. 3 which identifies the criteria for approval of all emissions trading transactions including NSR offsets, the State added provisions explaining which interpollutant trades between PM–10 and PM–10 precursors are allowed for NSR offsets. Specifically, Section V.F.1. provides that new or modified major sources of a PM–10 precursor can obtain offsets from reductions in that same precursor or in PM–10, while new or modified major sources of PM–10 can only obtain offsets from reductions in PM–10. This is consistent with EPA's current policy regarding offsets for PM–10.

However, the State did adopt an exception to this requirement in Section V.H.9. of Part A of Regulation No. 3. Specifically, Section V.H.9. allows interpollutant offsets other than those discussed in Section V.F.1. to be approved on a case-by-case basis, provided that the applicant demonstrates, on the basis of EPA-approved methods where possible, that the emissions increases for the new or modified source will not cause or contribute to a violation of the NAAQS. Section V.H.9. further provides that the source's permit application will not be approved by the State until written approval has been received from the EPA. Because written approval will be required from EPA before a permit will be issued which allows an interpollutant trade for offsetting (other than those trades allowed in Section V.F.1.), EPA believes that it will be able to ensure any interpollutant offsets will meet the requirements of the Act concerning NSR. Thus, this exception is acceptable to EPA.

Thus, EPA is fully approving the State's nonattainment NSR rules for the Denver moderate PM–10 nonattainment area. For further details on the State's August 25, 1994 SIP submittal, see the August 28, 1996 notice of proposed rulemaking (61 FR 44266–44267) and the TSD.

C. November 17, 1994 SIP Submittal Revising the Definition of ''Source''

On October 14, 1981, EPA deleted the dual source definition from the nonattainment NSR permitting requirements and replaced it with the plantwide definition to give States the option of adopting the plantwide definition of source in nonattainment areas (see 46 FR 50766). Under the dual source definition, emissions increases that occurred either at an individual piece of process equipment or at the entire plant were reviewed to determine whether a major modification had occurred. This dual source definition precluded major sources undergoing a modification at an individual piece of process equipment from considering other emission decreases within the plant in determining the net emissions increase of the modification.

In the October 1981 Federal Register document, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). EPA reasoned that, since part D of the Act requires States to adopt adequate SIPs which demonstrate attainment and maintenance of the NAAQS, ''deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with part D'' (46 FR 50767). EPA also added that, by bringing more plant modifications into the NSR permitting process, the dual source definition may discourage replacement of older, dirtier processes and, hence, retard not only economic growth but also progress toward clean air. Last, EPA pointed out that, under the plantwide definition, new equipment would still be subject to any applicable new source performance standard (NSPS). Thus, EPA regarded changing to the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans and, at best, the potential for air quality improvements driven by the marketplace. In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the

[1] Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. Any such determination that sources of PM_{10} precursors do not contribute significantly is generally made concurrently with EPA's promulgation of an action on a SIP submittal for a PM_{10} nonattainment area.

conflicting purposes of part D of the Act and, hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

Consequently, on November 17, 1994, Colorado submitted revisions to the Common Provisions Regulation and Regulation No. 3 to change from the dual definition of ''source'' to the plantwide ''source'' definition in its nonattainment NSR permitting requirements.

In the October 14, 1981 Federal Register which deleted the dual source definition from the Federal nonattainment NSR permitting requirements, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual source or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (see 46 FR 50767 and 50769).

This 1981 ruling allowing States to adopt a plantwide definition assumed that nonattainment areas already had, or shortly would have, approved part D plans in place. However, the Act was amended in 1990, creating new requirements and deadlines for submittal of attainment plans for areas which were not in attainment of the NAAQS. In light of these changes, EPA will now approve adoption of the plantwide definition into SIPs for nonattainment areas that need but lack adequate part D attainment plans approved by EPA only if the State has demonstrated that it is making, and will continue to make, reasonable efforts to adopt and submit complete plans for timely attainment in these areas.

For the majority of Colorado's nonattainment areas that are required to have part D attainment plans, the State has EPA-approved part D plans. The only areas for which the State does not yet have fully approved part D attainment plans are the Denver PM–10, Denver carbon monoxide (CO), Longmont CO, and Steamboat Springs PM–10 nonattainment areas. The State has submitted part D plans for all of these areas, but EPA has not yet completed action on these submittals. Thus, EPA believes the State has adequately demonstrated that it has made, and will continue to make, reasonable efforts to get an approved part D attainment plan in place for these areas.

Further, the State has certified that it did not, and will not, rely on any emissions reductions from the operation of the NSR program using the dual source definition in any of its nonattainment area demonstrations of attainment. EPA's examination of the State's attainment demonstrations confirmed the State's certification. Therefore, EPA believes it is appropriate to approve Colorado's switch to a plantwide definition of source in accordance with EPA's 1981 action, inasmuch as the State has demonstrated that it is making, and will continue to make, reasonable efforts to get approved part D attainment plans in place for all of its nonattainment areas.

II. Final Action

EPA is approving the revisions to Colorado's construction permitting program in Regulation No. 3 submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. EPA is also approving the revisions to the Common Provisions Regulation submitted on November 17, 1994. However, for the reasons discussed above, EPA is taking no action, at this time, on Section IV.C. of Part A of Regulation No. 3.

EPA would also like to clarify its action regarding the State's provisions for trading of emission reduction credits in Section V. of Part A of Regulation No. 3. The State initially submitted those provisions to EPA on November 17, 1988, along with other revisions to Regulation No. 3, for approval as a generic emissions trading rule. However, in EPA's June 17, 1992 rulemaking on the State's November 17, 1988 SIP submittal, EPA stated that the State's emission reduction credit trading rule was only being approved as a rule which requires case-by-case SIP revisions for approval of all bubbles. (See 57 FR 26999.) In the SIP submittals being acted on in this action, the State did not submit any revisions intended to change EPA's June 17, 1992 rulemaking regarding the State's emissions trading provisions. Thus, in this action, EPA is only approving Section V. of Part A as a rule that requires case-by-case SIP revisions for approval of all bubbles.

Also in this action, EPA is revising 40 CFR 52.320 to list in the ''Incorporation by reference'' section various sections of the Common Provisions Regulation that EPA approved in past actions but that EPA did not list in the CFR, as follows:

A. Section I.A. and the definitions of ''emission control regulation'' and ''volatile organic compound,'' which were part of the State's January 14, 1993 SIP submittal that EPA approved on August 18, 1994 (59 FR 42500–42506); and

B. The definitions of ''baseline area'' and ''reconstruction,'' which were part of the State's April 9, 1992 SIP submittal that EPA approved on September 27, 1993 (58 FR 50269–50271).

Last, EPA is deleting two NSR rule disapprovals listed at 40 CFR 52.324(c) and 52.343(a)(1). The State corrected deficiencies in these rules in its January 14, 1993 SIP submittal, which EPA approved on August 18, 1994 (see 59 FR 42504). Therefore, these disapprovals no longer apply to Colorado's NSR program.

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

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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 section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal

inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 5, 1996.

Jack W. McGraw,

Acting Regional Administrator

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(72) to read as follows:

§52.320 Identification of plan.

* * * * *

(c) * * *

(72) On November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996, the Governor of Colorado submitted revisions to the State's construction permitting requirements in Regulation No. 3 and the Common Provisions Regulation. These revisions included nonattainment new source review permitting requirements for new and modified major sources of PM–10 precursors locating in the Denver moderate PM–10 nonattainment area, changing from the dual source definition to the plantwide definition of source in nonattainment new source review permitting, other changes to Regulation No. 3 to make the construction permitting program more compatible with the State's title V operating permit program, and correction of deficiencies. In addition, the Governor submitted revisions to the Common Provisions Regulation on April 9, 1992 and January 14, 1993.

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of ''baseline area'' and ''reconstruction;'' adopted 10/17/91, effective 11/30/91.

(B) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definitions of ''net emissions increase'' and ''stationary source;'' adopted 8/20/92, effective 9/30/92.

(C) Common Provisions Regulation, 5 CCR 1001–2, Section I.A. and Section I.G., definitions of ''emission control regulation'' and ''volatile organic compound;'' adopted 11/19/92, effective 12/30/92.

(D) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/18/94, effective 9/30/94, as follows: Part A (with the exception of Section IV.C.) and Part B. This version of Regulation No. 3, as incorporated by reference here, supersedes and replaces all versions of Regulation No. 3 approved by EPA in previous actions.

(E) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted on 3/16/95, effective 5/30/95, as follows: Part A: Sections I.B.12., I.B.31., I.B.32., I.B.35.B., I.B.36., I.B.37., I.B.41., I.B.50., I.B.57., I.B.66., II.D.5.c., II.D.5.d., V.B., V.C.6., V.C.10., V.E.1.c., V.E.1.d., V.H.4. through V.H.8., V.I.1., VI.C.1.f., and VII.A.; Part B: Sections III.D.2., III.D.3., IV.B.4., IV.C.1., IV.D.1.a., IV.D.2.c.(i)(E), IV.D.4.a., and IV.J.

(ii) Additional material.

(A) July 3, 1995 letter from Martha E. Rudolph, First Assistant Attorney General, Colorado Office of the Attorney General, to Jonah Staller, EPA.

* * * * *

§ 52.324 [Amended]

3. Section 52.324 is amended by removing paragraph (c).

4. Section 52.329 is amended by adding paragraph (b) to read as follows:

§52.329 Rules and regulations.

* * * * *

(b) On January 14, 1993 and on August 25, 1994, the Governor of Colorado submitted revisions to the State's nonattainment new source review permitting regulations to bring the State's regulations up to date with the 1990 Amendments to the Clean Air Act. With these revisions, the State's regulations satisfy the part D new source review permitting requirements for the Denver metropolitan moderate PM–10 nonattainment area.

§ 52.343 [Amended]

5. Section 52.343 is amended by removing paragraph (a)(1) and by redesignating paragraphs (a)(2), (a)(3), and (a)(4) as (a)(1), (a)(2) and (a)(3) respectively.

[FR Doc. 97–1084 Filed 1–17–97; 8:45 am]

BILLING CODE 6560–50–P