

and transport gas from all potential sources of supply. The standardization of business practices conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted under Order No. 636 and the restructuring of the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202-208-1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission 202-395-3087].

#### VII. Effective Date

These regulations are effective April 9, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

#### List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,  
Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

#### **PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES**

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7532; 43 U.S.C. 1331-1356.

2. In § 284.10, paragraphs (b)(1)(i) through (b)(1)(v) are revised to read as follows:

#### **§ 284.10 Standards for Pipeline Business Operations and Communications.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Nominations Related Standards (Version 1.1, January 31, 1997), with the exception of Standard 1.3.32;

(ii) Flowing Gas Related Standards (Version 1.1, January 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.1, January 31, 1997);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.0, October 24, 1996), with the exception of Standard 4.3.5; and

(v) Capacity Release Related Standards (Version 1.1, January 31, 1997).

\* \* \* \* \*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

[CO-001-0011; CO-001-0012; CO-001-0013; CO-001-0014; FRL-5692-3]

#### **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; Oxygenated Gasoline Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** In this document, EPA is approving 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 on July 11 and 13, 1994, September 29, 1995, and December 22, 1995 to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance (I/M)) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP, and further revisions to

Regulation 13 to shorten the effective period of the oxygenated fuels program. It also includes reclassification of the Denver CO nonattainment area from Moderate to Serious. EPA proposed to approve the July 1994 and September 1995 SIP submissions and to reclassify the Denver area to Serious in the Federal Register on July 9, 1996. EPA published a supplemental proposal to approve the December 22, 1995 SIP submission shortening the oxygenated fuels program period and to approve the Denver and Longmont CO SIPs based on the shortened period on December 6, 1996. The rationale for the final approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

**EFFECTIVE DATE:** This action is effective on April 9, 1997.

**ADDRESSES:** 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 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 SIPs for these areas, respectively. 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, [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 rulemaking action. In today's action on the Denver and Longmont CO SIPs, EPA is applying its interpretations taking into consideration the specific factual issues presented and comments received from the public.

This Federal Register document 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 in EPA's July 9, 1996 (61 FR 36004) and December 6, 1996 (61 FR 64647) Federal Register documents proposing action on the SIP revisions.

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. Longmont was classified as a Moderate area in 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 CAAA requirements discussed above, as well as other CAAA mandates.

The State submitted revisions to Regulations 11 and 13 on September 29, 1995, to implement the I/M and oxygenated fuels program revisions committed to in the CO SIP. EPA proposed approval of these revisions in its July 9, 1996 Federal Register document, and is today taking final action to approve these revisions.

The State submitted additional revisions to Regulation 13 on December 22, 1995, shortening the effective period of the oxygenated fuels program. EPA published a Federal Register document on December 6, 1996, proposing approval of these revisions and re-proposing approval of the Denver and Longmont CO SIPs to provide an opportunity for public comment on the impact of this revision to Regulation 13 on the CO SIPs. EPA is today taking final action to approve the revisions to Regulation 13 that the State submitted on December 22, 1995.

## II. Response to Public Comments

EPA received numerous comments on its proposed approval of the Denver CO SIP and the proposed reclassification of Denver from Moderate to Serious for CO. No comments were received specifically regarding the Longmont CO SIP. EPA received one set of comments regarding its proposed approval of the shortening of the effective period of the oxygenated fuels program. The comments and EPA's responses follow.

### *Extension of the Comment Period*

Several parties requested that EPA extend its comment period on the proposed approval of the SIP to allow more time for the preparation and submission of comments. In response to these requests, EPA extended the comment period for an additional 30 days (see 61 FR 43501, August 23, 1996).

### *Legality of the SIP Submission Under State Law*

Several parties commented that EPA should return the Denver CO SIP to the State without action, because it was submitted to EPA in conflict with the requirements of State law. These comments generally concern the nature of the Air Quality Control Commission's (AQCC's) submission of the SIP to Legislative Council for review, and the AQCC's and the Governor's response to Legislative Council's actions.

EPA's acceptance of the SIP through its July 14, 1994 determination of SIP completeness was based on the June 30, 1994 letter from the State Attorney General's Office submitted with the SIP. This letter certifies that the SIP was adopted and submitted in compliance with State law. Specifically, Section 25-7-133, C.R.S., required the submission of SIPs "regarding the regulation of mobile sources" to Legislative Council for review 45 days prior to submission to EPA. The CO SIP arguably did not fall within this criterion, as it did not include any regulatory content regarding mobile sources. Revisions to Regulations 11 and 13 (I/M and oxygenated fuels programs) to implement the provisions of the CO SIP were discussed in the SIP, but were not adopted or submitted with it. These revisions were adopted later in 1994 by the AQCC, received full Legislative Council review and were submitted to EPA in September 1995. Nevertheless, the AQCC chose to submit the CO SIP to Legislative Council for review even though it did not contain any mobile source regulation revisions.

The June 30, 1994 letter from the AG's office concedes that the SIP was not submitted to Legislative Council 45 days prior to submittal to EPA, but notes that the Council acted on the SIP at its June 21, 1994 meeting and, in effect, waived the 45 day requirement. Also, according to the June 30, 1994 letter, the actions by Legislative Council at its meeting were not fully in compliance with State law:

"The Council may act in one of two ways: it can return the SIP in its entirety and it is then deemed approved, or it can submit it to the General Assembly (via petition for special session if the General Assembly is not in session)\* \* \* The Legislative Council, on June 21, 1994 took action by motion, wherein it voted to postpone review of the CO SIP submission, voted to return the plan for revisions by the Commission, and voted to conduct a final review no later than January 15, 1995. Pursuant to statute, because no special assembly was called by the

Council [the General Assembly was not in session], the SIP is deemed returned and approved.”

EPA finds the State Attorney General's Office's interpretation reasonable, and thus, EPA accepts that Office's conclusion that the SIP was, in fact, submitted to EPA for action in compliance with State law.

#### *Oxygenated Fuels Program*

Several comments were received with respect to the oxygenated fuels program. These comments and EPA's responses follow.

(1) The submission violates Section 25-7-105.1, C.R.S., which states that any regulation that is more stringent than Federal law shall not constitute part of a state implementation plan.

Putting aside for the purposes of this response the question of what EPA's role should be with respect to this State law, EPA does not believe that the 3.1% oxygenated fuels program is more stringent than is required under the Act. First, EPA does not believe section 211(c) of the Act preempts the State from requiring a 3.1% minimum oxygen content standard and, thus, does not believe a finding of necessity is required under section 211(c)(4)(C) of the Act (see discussion in response to comment 6 below). Second, the State is relying on the 3.1% oxygenated fuels program as one measure to help demonstrate attainment of the NAAQS for CO, as required by sections 110(a) and 187(a)(7) of the Act. Without the 3.1% oxygenated fuels program, the SIP would be unable to demonstrate attainment of the NAAQS. Thus, the 3.1% oxygenated fuels program is not more stringent than the Act requires.

(2) Subsequent to AQCC adoption of the CO SIP, the AQCC adopted revisions to Regulation 13 which shortened the control period during which the oxygenated fuels program is in effect. EPA's approval of the CO SIP does not address this revision.

Based on this comment, EPA repropose approval of the Denver and Longmont CO SIPs, incorporating the shortened oxygenated gasoline season, and also proposed approval of the revisions to Regulation 13 shortening the season (see 61 FR 64647, December 6, 1996). EPA is now approving the shortening of the oxygenated gasoline season and is approving the Denver and Longmont CO SIPs based on the shortened season.

(3) EPA approval of the 3.1% oxygenated fuels program would be contrary to *Exxon Corp. v. City of New York*, 548 F.2d 1088 (2nd Cir. 1977).

The *Exxon v. City of New York* decision was based on pre-1990 CAA

language, EPA regulations that have since been amended, and in part, different factual circumstances that bear no relevance to the situation here. Moreover, the changes in section 211(c)(4) and the 40 CFR Part 80 fuel regulations since the *Exxon* decision directly modify the provisions that the court relied on in a way that limits the scope of preemption of state fuel controls. Thus, this decision is not relevant to the current situation.

In *Exxon Corp. v. City of New York*, the court found that New York City's lead and volatility regulations were preempted under section 211(c)(4). In the Part 80 regulations, EPA had set out the federal fuel requirements and stated that they prescribed regulations for the control and/or prohibition of fuels and additives. EPA also had promulgated specific lead regulations, less stringent than the New York City regulations, but did not address volatility. At the time of the court's decision, section 211(c)(4) preempted "any control or prohibition respecting use of a fuel or fuel additive." The court found that EPA had promulgated regulations respecting the use of fuels, and thus, New York City's more stringent regulations were preempted.

In the 1990 CAAA, Congress amended the language of section 211(c)(4) to preempt "any control or prohibition respecting any characteristic or component of a fuel or fuel additive." After the court's decision, EPA also modified the Part 80 regulations to make it clear that they are not intended to preempt states' ability to regulate fuels and fuel additives that EPA has not addressed. Section 80.1(b) states: "Nothing in this part is intended to preempt the ability of State or local governments to control or prohibit any fuel or additive for use in motor vehicles and motor vehicle engines which is not explicitly regulated by this part." Thus, both Congress and the Agency have clearly indicated that EPA's fuel requirements do not preempt states from regulating a specific characteristic or component that the Agency has not addressed. As discussed below, there are no federal regulations applicable to oxygen content in the Denver area, and hence *Exxon v. City of New York* is not applicable here.

(4) EPA approval of the 3.1% oxygenated fuels program could lead to oxygenate shortages which could interfere with the federal reformulated gasoline program.

During the two winter seasons since the CO SIP was submitted to EPA, the average oxygen content in Denver has been well above 3.1%. The federal reformulated gasoline program took

effect on January 1, 1995, and thus has been in effect coincident with the Denver oxygenated fuels program for over two years. No documented oxygenate shortages have occurred as a result of Denver's program. Furthermore, the commentor did not provide any indication that a change in circumstances may occur that could produce any problems in the future.

(5) EPA approval of the 3.1% oxygenated fuels program could lead to an increase in NO<sub>x</sub> emissions, which could jeopardize public health by increasing ozone concentrations.

Several parties have contacted EPA in the past with regard to potential NO<sub>x</sub> increases from use of oxygenated fuels. No good scientific information exists that conclusively documents an increase in fleet NO<sub>x</sub> emissions from use of oxygenated fuels. The laboratory studies to date have generally had poor control of other fuel characteristics that affect NO<sub>x</sub> emissions, making the results unreliable.

Increases in NO<sub>x</sub> emissions from the use of oxygenates would not be expected to generate exceedances of the ozone NAAQS, as asserted by the commentor. Oxygenate use is only required during the winter season, when climatic conditions are not favorable to the formation of tropospheric (ground-level) ozone. No exceedances of the ozone NAAQS have occurred at any time during the ten winter seasons in which oxygenated fuels have been used in the Denver area.

(6) The 3.1% oxygen content is higher than is necessary to attain the CO NAAQS, and other reasonable, practicable means of attainment are available, so EPA cannot approve this program under section 211(c)(4)(C) of the CAA. Moreover, section 211(m) provisions occupy the field for regulation of oxygen content of gasoline and thereby preempt any different regulation by a state.

Section 211(c)(4)(C) provides that states are preempted from regulating motor vehicle fuels where EPA has already acted, either to regulate the fuel or to find that no regulation is necessary. If preemption applies, the state may regulate the fuel only if EPA finds the state requirement necessary to achieve the NAAQS for the relevant pollutant. Here, EPA has neither regulated fuel oxygen content in Colorado nor made a finding that no such regulation is necessary. Therefore, the state regulation is not preempted and there is no need to find necessity. In the absence of federal preemption, states are free to regulate to control air pollution, and EPA must approve lawful state requirements into SIPs, as long as

the state submission meets all applicable requirements under Title I of the Act.

Section 211(c)(4)(A) preempts a state from "prescrib[ing] or attempt[ing] to enforce \* \* \* any control or prohibition respecting any characteristic or component of a fuel or fuel additive" under two circumstances. Section 211(c)(4)(A)(i) provides for preemption if EPA has found that no control or prohibition of the characteristic is necessary and has published that finding in the Federal Register. Section 211(c)(4)(A)(ii) provides that a state is preempted from regulating if EPA has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component, unless the state control or prohibition is identical to EPA's control or prohibition. Thus, to preempt state regulation under 211(c)(4), either EPA must publish a finding that a control is unnecessary, or EPA must promulgate a control of the same characteristic or component under section 211(c)(1).

EPA has not made any finding under section 211(c)(4)(A)(i) that control of fuel oxygen content is unnecessary. There is no preemption of the Regulation 13 requirement for a 3.1% oxygen content under this provision.

The only requirement that EPA has promulgated applicable to fuel oxygen content under 211(c)(1) is in the reformulated gasoline (RFG) regulations. EPA promulgated the RFG regulations under both sections 211(c)(1) and 211(k). However, Colorado is neither required to use RFG by statute, nor has it voluntarily opted into the RFG program. Thus, the RFG regulations do not apply in Colorado.

The statute is ambiguous as to whether federal regulation of a fuel characteristic in certain areas of the country preempts state regulation only in those areas, or whether it preempts any state regulation of that characteristic nationwide. The statute simply refers to "a control or prohibition applicable to such characteristic or component." The language does not indicate whether it means any control in any area or at any time generally applicable to a fuel characteristic, or a control actually applicable to a fuel characteristic in a given time and place. The statute is also ambiguous as to whether "characteristic or component of a fuel or fuel additive" should be read generally, as in "oxygen content," or specifically, as in "oxygen content in RFG areas." In delegating authority to the Agency to administer section 211(c), Congress has also implicitly delegated the authority to reasonably interpret the provision in

light of any ambiguity. *Chevron, USA v. NRDC*, 467 U.S. 837 (1984).

EPA believes that the better reading of the statute is that preemption by the RFG regulations applies more narrowly, only in the areas where the federal RFG regulation applies. First, the RFG regulations arguably are not a control "applicable" to fuel oxygen content outside of RFG areas. Secondly, this interpretation is consistent with the judicial canon of statutory construction by which courts construe preemption narrowly. Thirdly, as a policy matter, EPA's decision to regulate fuel oxygen content in RFG areas did not encompass a determination that states should not or need not regulate that characteristic outside of those areas. Section 211(c)(4) applies only where EPA has affirmatively decided to regulate a particular fuel characteristic or component, or has affirmatively found that no such regulation is necessary and has published such a finding in the Federal Register. The RFG rulemaking never considered whether fuel oxygen content requirements were needed for CO control outside RFG areas, but merely incorporated the statutory requirement to set a 2.0 percent oxygen content for RFG. Moreover, whether RFG applies to an area depends solely on its status as an ozone nonattainment area; its status for CO is irrelevant. This further reinforces the conclusion that oxygen content requirements under RFG do not represent any EPA or Congressional decision on the need for such requirements outside of RFG areas. Finally, the purpose of the section 211(c)(4) preemption provision is to strike an appropriate balance between states' ability to freely adopt control measures, and avoidance of a variety of different state standards, potentially disrupting the national motor vehicle fuel market and federal regulation of such fuels. This purpose is not served by applying preemption where there is no federal regulatory scheme, as here in Colorado.

Finally, section 211(m) does not constitute federal regulation of oxygen content, which could occupy the field for regulation of oxygen content and hence preempt state regulation. Section 211(m) requires states with certain CO nonattainment areas to submit a SIP revision requiring gasoline "to contain not less than 2.7 percent oxygen content by weight." The statute requires state regulation, not federal, and explicitly sets a minimum standard for such state regulation, leaving the state free to adopt more stringent requirements if it so chooses. There is no indication in the statute or the legislative history that by

specifying a minimum oxygen level that states should require, Congress intended the federal government to occupy the field of oxygen content regulation and preempt states from establishing a more stringent standard.

Because the federal RFG fuel oxygen content provision does not apply to Colorado, section 211(c)(4) does not preempt the state from promulgating its own average fuel oxygen content standard of 3.1%. Nor does section 211(m) explicitly or implicitly impose such a restriction. Moreover, EPA must approve into a SIP any lawful provision concerning control of a criteria pollutant that is submitted by a State and that otherwise meets the requirements of section 110. See *Union Electric Co. v. EPA*, 427 U.S. 246 (1976). Thus, Colorado was free to adopt a 3.1% oxygen content standard as a control strategy to help attain the CO NAAQS.

(7) EPA approval of the 3.1% oxygenated fuels program in Colorado would be a *de facto* mandate that at least 50% of the gasoline in the Denver area contain ethanol, contrary to *American Petroleum Institute vs. United States Environmental Protection Agency*, 52 F.3d 1113 (D.C. Cir. 1995).

In *API v. EPA*, the issue was whether EPA has the authority to mandate use of a particular oxygenate in RFG. The court held that EPA does not have such authority because § 211(k) lays out the specific criteria that EPA is to consider in promulgating the RFG requirements, and the ethanol mandate was not established pursuant to those criteria. This holding has no relevance for whether a state, rather than EPA, could directly mandate use of a particular oxygenate. Moreover, the state here has not mandated use of any particular oxygenate. It has merely established oxygen content requirements, and the industry may use any oxygenate capable of meeting those requirements, subject to the maximum blending restrictions. In addition, these are the same oxygen content requirements as the CAA mandates for certain areas, which indicates that Congress contemplated that such higher oxygen content levels may be needed in some areas. In the absence of federal preemption, states are free to adopt fuel controls for emission reductions. *API* identifies no additional limit on EPA's authority to approve such state requirements in SIPs.

(8) Recent studies have demonstrated that oxygenated fuels have little or no effect on CO air quality. EPA should facilitate an independent review of the impacts of oxygenated fuels on CO air quality before acting to approve the CO SIP.

The White House Office of Science and Technology Policy (OSTP) has recently issued a draft report on oxygenated fuels, which compiles the results of a number of other studies ("Interagency Assessment of Oxygenated Fuels," September 1996). While not yet final, the draft report concludes that oxygenated fuels produce approximately a 10.0% to 13.5% ambient CO reduction benefit. The National Academy of Sciences (NAS) has also issued a recent report commenting on the OSTP report. The NAS report found that oxygenated fuels programs have a benefit of zero to 10 percent in reducing ambient CO. Of the 10 existing "real world" studies of oxygenated fuels' ambient air impacts cited in the NAS report, eight show a statistically significant benefit from the program, and two studies (both in North Carolina) showed no significant benefit or did not attempt to quantify a benefit. Likewise, virtually all laboratory studies of oxygenated fuels, including some conducted by the automotive and petroleum industries, show a significant carbon monoxide reduction at the tailpipe from use of these fuels.

EPA recently conducted an analysis of carbon monoxide air quality data from cities around the country ("Impact of the Oxyfuel Program on Ambient CO Levels," J. Richard Cook et al, EPA420-R-96-002). In this report, EPA compared data from a number of cities which used oxygenated fuels beginning in the winter of 1992-93 to data from several cities which did not. Using this approach, EPA found an immediate and sustained reduction of carbon monoxide concentrations in the range of 3.1% to 13.6% in cities using oxygenated fuels, in excess of the reductions expected from new cars entering the fleet. This reduction was not seen in cities not using oxygenated fuels. This level of benefit is consistent with that found in other studies. A subsequent regression modeling analysis by Dr. Gary Whitten of SAI of ambient CO data in oxygenated fuels areas ("Regression Modeling of Oxyfuel Effects on Ambient CO Concentrations," SYSAPP-96/78, January 8, 1997) found a 14% reduction in ambient CO concentrations due to implementation of the program.

These analyses are significant because they are based on measurements of actual air quality data in these cities over at least two winter periods. Many interested parties have criticized laboratory studies as not being representative of the real world; however, in attempting to carry out a "real world" study in a single urban area, it is very difficult to separate the influence of oxygenated fuels from all of

the other factors that affect carbon monoxide concentrations (including weather, congestion, and changes in the mix of cars and trucks in the fleet).

The National Academy of Science's report points out some areas where additional research would be useful, and EPA and the State are working to design a study to address some of the uncertainties surrounding the use of oxygenated fuels. However, the NAS report and the available scientific data support continuing the oxygenated fuels program.

While not a factor in EPA's decision, readers may be interested to know that oxygenated fuels is one of the least expensive carbon monoxide control strategies available. In terms of dollars per ton of pollution eliminated, it is much cheaper than other alternatives, such as transportation control measures, mandatory employee trip reduction, conversion of vehicles to run on alternative fuels like propane or natural gas, or industrial controls. The program also serves as an important defense against factors that increase carbon monoxide emissions in the Denver area, including growth in daily vehicle miles travelled, growth in the amount of time that vehicles spend in congestion, and growth in the number of sport utility vehicles and other types of higher-emitting light-duty trucks on the road. EPA has substantial evidence at this time that oxygenated fuels are an effective means to control carbon monoxide, and hence it is appropriate to approve this provision of the CO SIP at this time.

#### *Shortening of the Oxygenated Fuels Season*

One party submitted comments in response to EPA's December 6, 1996 supplemental notice of proposed rulemaking, proposing approval of the revisions to Regulation 13 removing the last two weeks of the oxygenated fuels season and reproposing approval of the CO SIPs to incorporate this revision. This commentator supported EPA's action to approve the shortening of the oxygenated fuels season. The commentator also raised other issues with respect to the oxygenated fuels program which have been addressed above.

#### *Abandoned and Impounded Vehicle Program*

One commentator expressed concern that the SIP provision preventing re-registration of abandoned or impounded pre-1982 vehicles would negatively impact the collector car industry of the Denver region and would prevent owners from recovering stolen vehicles. Another commentator expressed concern

that this program would unnecessarily harm lower-income individuals and artificially increase demand for new cars. While EPA understands these concerns, the Act prohibits EPA from basing its actions concerning SIPs on considerations involving the economic reasonableness of State actions. See *Union Electric Co. v. EPA*, 427 U.S. 246, 256-266 (1976); 42 U.S.C. section 7410(a)(2).

While EPA is prohibited from basing its action on the SIP on economic grounds, EPA has concluded for other reasons that it should not act on this element of the SIP. The provision is not well-defined in the SIP, with the design and implementation of this program left up to the discretion of local jurisdictions, and no credit was taken for this measure in the attainment demonstration (see SIP page IX-4). Therefore, EPA is not taking action on this element of the SIP.

#### *Revised Emissions Standards for Pre-1982 Vehicles*

One commentator stated that the requirement for tighter emissions testing cutpoints for pre-1982 was arbitrary and capricious, and unduly impacted owners of these model year vehicles in the Denver region. Again, EPA is prohibited by law from basing its actions on SIPs on considerations involving the economic reasonableness of State actions. However, pre-1982 vehicles were targeted for tighter cutpoints because 1982 and newer vehicles are already subject to the more stringent provisions of the enhanced vehicle inspection and maintenance program. Tighter cutpoints for pre-1982 vehicles should result in more high-emitting vehicles being identified and repaired through the requirements of Regulation 11. Data from the enhanced I/M program show that the average older vehicle emits carbon monoxide at levels many times higher than the level at which they were certified for sale. However, there is no presumption that all older vehicles are high emitters, and vehicles in good operating condition should not fail the tighter cutpoints.

This commentator also stated that the State and EPA had failed to consider the smaller proportion of total VMT generated by pre-1982 vehicles. The mobile source emissions modeling conducted for the SIP is based on estimates of annual mileage accumulation and share of daily VMT for each model year. Thus, the SIP modeling inputs reflect the smaller proportion of total VMT generated by pre-1982 vehicles. While it is true that pre-1982 vehicles do represent a relatively small proportion of total

regional VMT, emissions generated by these vehicles are still significant because these vehicles are required to meet less stringent emissions standards by the State and EPA, and thus, per-vehicle emissions are higher. The SIP estimates that this measure would provide a CO emission reduction benefit of 20 tons per day in 1995. EPA believes the estimates of pre-1982 VMT share and emissions reductions from the SIP provision are reasonable.

Another commentator stated that EPA should give the State the option of eliminating the I/M program and the prohibition on re-registration of abandoned and impounded vehicles in favor of an enforceable system of user fees or other economic incentives that would address the actual contribution of individual vehicles and drivers to the region's pollution problems. The Clean Air Act requires the State to implement an enhanced I/M program that meets certain minimum requirements. However, the Act would allow the State to revise its SIP at any time to add the type of program mentioned by the commentator, as long as the program meets the SIP requirements of Section 110. EPA does not have to take any type of action in order to enable the State to develop and submit this type of SIP revision. As noted above, EPA is not acting on the SIP provision that prohibits re-registration of abandoned and impounded vehicles.

#### *Transportation Control Measures (TCMs)*

One commentator felt that EPA's description of the relationship of the TCMs to the SIP as a whole was unclear. This commentator felt that EPA was interpreting the SIP to incorporate the TCMs as part of the attainment demonstration, in addition to incorporating the TCMs as contingency measures.

Further review of the SIP confirms that the TCMs are only meant to be incorporated as contingency measures. This intent is clearly stated in the SIP on pages VI-3 and X-1. The SIP states the intent of the area to implement the contingency measures early, as allowed by EPA policy, to obtain additional emission reductions. Chapter XII of the SIP, Attainment Demonstration, clearly demonstrates that these measures are not necessary for the Denver area to attain the CO NAAQS by December 31, 2000. Thus, EPA is clarifying that the TCMs are intended to be enforceable provisions of the SIP only as contingency measures, with implementation required only in the event that the contingency measures are triggered (through the mechanisms

discussed in the proposal). The State has made an adequate showing that TCMs are not needed for attainment, as required by section 187(a)(2)(B) of the Act.

Another commentator stated that the requirements of the Act for TCMs in Denver had not been met. EPA believes that the State and the Regional Air Quality Council have correctly interpreted the Act's requirements for TCMs, that the TCM provisions of the SIP are adequate, and that the SIP contains an adequate showing that TCMs are not necessary for attainment.

This commentator also stated that EPA should require annual reporting on the effectiveness and implementation of TCMs and other control strategies. EPA notes that periodic reporting is already required for a number of control measures and does not believe that further reporting is necessary at this time. For example, the Act requires annual reporting of VMT and a comparison of actual VMT with the SIP forecasts. The State has complied with these requirements. The Act and EPA's transportation conformity rule (58 FR 62188, November 24, 1993) also require that the Denver Regional Council of Governments (DRCOG) report on the implementation status of TCMs each time a conformity determination is made, and prohibit conformity findings if TCMs are not being implemented as required by the SIP. The State also produces annual reports on the effectiveness of the SIP's two major control strategies, the I/M and oxygenated fuels programs, as required by State law. EPA's I/M regulations (40 CFR Part 51, Subpart S) also require periodic evaluation of and reporting on the effectiveness of the I/M program.

#### *Contingency Measures*

One commentator stated that the SIP does not contain adequate contingency measures, and that EPA should require the State to implement the contingency measures based on the Denver area's failure to attain. This commentator also stated that it was insufficient for the SIP to describe existing conditions as contingency measures which have already been implemented.

As discussed in the proposal (61 FR 36009, July 9, 1996), the SIP TCMs exceed the minimum emission reductions established in EPA guidance, and EPA considers these measures adequate. Although the State has chosen to voluntarily implement many of the contingency measures, and thus obtain the benefits of early emissions reductions, the commentator is correct that EPA is not requiring the State to implement the contingency measures in

the SIP based on the area's failure to attain the standard by the end of 1995. EPA believes it is neither necessary nor appropriate to do so. This is because EPA's approval of this Serious area CO SIP, which the State has been implementing since 1994, obviates the need for Moderate area contingency measures. Contingency measures for a Moderate CO nonattainment area with a design value greater than 12.7 ppm are intended to provide emissions reductions while the State revises its SIP to meet Serious area SIP requirements. Here the State has already submitted a Serious area SIP that demonstrates attainment of the CO standard by the end of 2000, and EPA is approving it.

In addition, there is no EPA-approved Moderate area CO SIP for the Denver area on which EPA can base a requirement that the State implement contingency measures for the failure to attain the CO standard by the end of 1995. If an EPA-approved Moderate area CO SIP had been in place at the time the area violated the CO standard in 1995, EPA would have required the State to implement the contingency measures contained in that SIP. In the Serious area SIP that the State has submitted and that EPA is approving today, contingency measures are tied to the 2000 attainment date. There is no basis or necessity for EPA to require the State to implement contingency measures based on the area's failure to attain the CO standard by the end of 1995.

The SIP envisions that the TCMs identified as contingency measures will be implemented early. This is acceptable to EPA. EPA policy (August 13, 1993 memorandum from G.T. Helms to regional Air Branch Chiefs entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas") encourages the early implementation of contingency measures for the additional emission reductions and progress toward attainment that they provide. EPA believes that requiring states to adopt additional contingency measures to replace measures that were implemented early would only discourage early implementation and the resulting additional emission reductions.

#### *Reclassification to Serious*

Two commentators expressed concern over EPA's proposed reclassification of the Denver area from Moderate to Serious for CO, given the small number and low absolute value of violations in recent years. These commentators felt that EPA should recognize Denver's progress toward attainment of the CO NAAQS in

recent years. EPA recognizes that Denver has taken significant steps to reduce CO levels and make progress toward attainment, including implementation of a comprehensive woodburning control program, the nation's first oxygenated fuels program, and an effective enhanced I/M program. However, as explained in the proposed rulemaking, the unambiguous provisions of the CAA and recent ambient values for CO in Denver compel EPA to take this action.

One commentator stated that the SIP does not contain the elements required for a Serious area SIP. As discussed in detail in the proposal, EPA believes that the SIP does contain all required elements.

#### *Attainment Demonstration*

One commentator submitted extensive comments on the adequacy of the attainment demonstration. This commentator felt that the attainment demonstration was inadequate because it did not consider other downtown intersections with the potential of experiencing high concentrations of CO and because growth projections used in the modeling underestimate the amount of growth in traffic that has occurred in the Denver area since the attainment demonstration was submitted to EPA.

The State performed preliminary CAL3QHC modeling of CO concentrations at three intersections in the downtown area: Speer and Auraria Boulevard, Broadway and Colfax, and Broadway and Champa. The CAMP air quality/meteorology monitoring station, which has historically recorded the highest levels of CO in the Denver area, is located adjacent to the intersection of Broadway and Champa. The preliminary modeling results showed predicted concentrations at the Speer/Auraria and Broadway/Colfax intersections that were up to 6 parts per million (ppm) higher than concentrations predicted at the CAMP intersection. However, the State selected only Broadway and Champa (CAMP) for use in the SIP attainment demonstration because the on-site air quality and meteorological data available at this location provided more confidence in the modeling results. To ensure that higher concentrations exceeding the NAAQS do not occur at other downtown locations the State has performed supplemental CO monitoring studies at all three intersections and elsewhere in the Denver urban core. The results to date have continued to support the use of CAMP as the maximum concentration downtown site; CAMP continues to record higher CO design value concentrations than any

other location in the Denver metro monitoring network.

The commentator stated that EPA has not applied its modeling standards, guidance, and protocols consistently to the choice of intersections or to the attainment demonstration generally. EPA (both Region VIII and the national Model Clearinghouse) reviewed the State's analysis and found that it was consistent with national modeling policy and other recent Urban Airshed Model/CAL3QHC modeling applications. EPA believes that modeled concentrations at Speer/Auraria and Broadway/Colfax are unreliable and therefore is not requiring the State to use the preliminary CAL3QHC intersection modeling results to demonstrate attainment at these two intersections. EPA's position is based on the following factors: (1) Saturation CO monitoring studies in the downtown area and continuous wintertime monitoring since 1994 at Speer/Auraria do not support the modeled predictions of higher concentrations at these locations; (2) estimated wind speeds at Speer/Auraria and Broadway/Colfax during both episodes modeled were frequently below the stated threshold of the CAL3QHC model and are not considered valid for use in the model; (3) there is a possibility that "cold start" vehicle emissions may have been overestimated at these intersections, artificially increasing predicted concentrations; and (4) micro-meteorological effects of high-rise office buildings significantly increase modeling uncertainties at these intersections, where on-site meteorological data was not available.

EPA also notes that the State followed the criteria contained in the Guideline for Modeling Carbon Monoxide from Roadway Intersections (EPA-454/R-92-005) in identifying the six busiest intersections for the SIP analysis. State modeling of these intersections showed compliance with the NAAQS. However, these intersections are all located outside of the downtown area; downtown is where the highest concentrations have historically been measured. EPA subsequently requested the State to model an additional intersection in the downtown urban core in order to assure attainment of the NAAQS. However, the State's compliance with this request goes beyond the usual requirements for a CO SIP attainment demonstration analysis.

The commentator suggested that meteorological and other data are available that are more than adequate for modeling intersections other than CAMP. To EPA's knowledge, CAMP is the only intersection with representative

on-site meteorology data for the periods that were modeled. Off-site meteorology was available at the Tivoli site for portions of the SIP episodes modeled, but this site is located several hundred meters south of the current intersection of Speer and Auraria. EPA reviewed the Tivoli site and determined that meteorological data collected at this location would not be representative of conditions at the intersection. Winds at the Speer and Auraria intersection would be affected to a far greater degree by building wake effects than the Tivoli site. In addition, there have been extensive changes to the roadway and construction of additional structures in the area since the Tivoli data were obtained in 1988. No data whatsoever were available for the Broadway and Colfax intersection.

The commentator referred to critiques of the attainment demonstration developed by State staff and by outside sources. EPA has not been provided with and is not aware of any State or outside critiques of the attainment demonstration. EPA was provided with preliminary modeling results for the Speer and Auraria and Broadway and Colfax intersections by APCD staff members that were based on the Tivoli and CAMP meteorological/air quality data. In addition to using non-representative data, the analysis contained a number of modeling assumptions that were not consistent with the EPA Guideline on Air Quality Models or the CAL3QHC Model Users Manual, including incorrect atmospheric stabilities and wind speeds lower than the acceptable threshold for the CAL3QHC model. The final CAL3QHC modeling submitted by the APCD did not contain intersection modeling for the two intersections where on-site data were not available. EPA concurs with the final modeling analysis submitted by the State. This decision is supported by the supplemental CO monitoring studies that have been performed in the downtown area. These studies support the continued use of CAMP as the maximum concentration downtown site.

The commentator also suggested that EPA applied a different set of review criteria to the downtown intersections than to suburban sites, because the downtown intersections showed high CO concentrations that would trigger more stringent control strategies, and suggested that these different criteria led to high concentration intersections downtown being dropped from the SIP analysis. The reason the modeling results for the two intersections in the downtown area were dropped is that the CAL3QHC model could not be applied

appropriately given the effects of nearby downtown buildings on wind flow and the lack of representative on-site data. Building effects were not an issue at the six suburban intersections modeled in the SIP.

The commentor implied that EPA was basing its decision to approve the SIP on "voluntary" compliance with EPA requests, "understandings" between State and EPA staff, and written and unwritten EPA "guidance". The commentor suggested that EPA was honoring a "deal" that violates the letter and intent of the Act. EPA believes that the attainment demonstration meets the requirements of the Act. EPA addresses the commentor's specific concerns regarding the attainment demonstration in other portions of this response. EPA is not basing its decision to approve the SIP on any "deals" or improper "understandings" reached with the State, but on the SIP's compliance with the Act. EPA does not know what the commentor is referring to when it writes about "voluntary" compliance with EPA requests. To the extent EPA has offered guidance to the State, EPA believes such guidance has been consistent with the Act or a reasonable interpretation of the Act.

The commentor noted that many large projects have been planned or built since the attainment demonstration was submitted to EPA, and that newer growth projections show higher levels of traffic than those considered in the SIP. Two of the facilities specifically mentioned by the commentor (Coors Field and Elitch's) would not be expected to affect Denver's ability to attain the CO standard, since they are not operational during the winter season when the highest values of CO are measured in Denver. The proposed Pepsi Center, which could impact Denver's ability to attain the NAAQS due to its potential proximity to one of the downtown intersections where elevated values of CO have been monitored, has not been approved by the City and County of Denver, and there is apparently some possibility that this facility may not be located downtown at all. Denver is currently examining the traffic and air quality impacts of a wide range of potential development in the lower downtown area through its Central Platte Valley Multimodal Access and Air Quality Study.

The comment regarding newer projections of traffic growth apparently refers to revised estimates of daily vehicle miles travelled produced by DRCOG in the summer and fall of 1996. In early 1996, DRCOG made some improvements to its transportation

demand model (used for transportation planning, and to produce estimates of future VMT and speeds for air quality planning purposes) and validated the model with actual 1995 traffic counts recorded in Denver. These adjustments led to revised estimates of approximately 49 million miles per day of traffic in the Denver area (the previous modeled estimate had been approximately 45 million miles per day). Part of this estimated increase is due to actual growth in traffic in the Denver region, and part of it is due to use of improved methodologies for traffic counting in the region.

In November 1996, Colorado submitted its 1996 report of 1995 actual annual VMT, as required by the SIP's VMT tracking provisions and the Act. This report showed that actual 1995 VMT were 4.4% greater than the SIP projections and 1.3% greater than the most recent revised projection for 1995. These exceedances are within the allowable limits of EPA's VMT Tracking Program guidance (5.0% and 3.0% for the respective VMT projections). EPA established these tolerances in recognition of the uncertainty inherent in attempting to measure actual VMT in a large urban area. Since the most recent reported actual annual VMT is within these allowable tolerances, the State is not required to implement its contingency measures, and no revision to the SIP is required. If a subsequent VMT tracking report shows that the SIP VMT projections (or updated forecasts) are exceeded by greater than the margins of error allowed by EPA guidance, implementation of the contingency measures will be required, along with a revision to the SIP if necessary.

EPA believes that the State has followed the proper procedures (as outlined in EPA's guidance and the SIP's VMT Tracking Program protocol) in generating the annual VMT reports that EPA is relying on for its approval of the SIP. Several factors are involved in comparing estimates of daily VMT to estimates of annual VMT, including: (1) The geographic area covered by the different estimates; (2) whether average daily traffic or average weekday traffic are used; (3) the differences between the traffic counting network used by DRCOG for its model validation, and the network required for use by the Colorado Department of Transportation in generating the Highway Performance Monitoring System (HPMS) VMT data that the VMT Tracking Program traffic estimates are based on (use of HPMS data is required by EPA and U.S. Department of Transportation guidance); and (4) the assumptions

behind the original VMT estimates in the SIP.

There are a number of other factors that protect the SIP's attainment demonstration from growth in VMT. First, under the requirements of the EPA/DOT transportation conformity rule, DRCOG's transportation plans and transportation improvement programs must comply with the emissions budget for CO contained in the CO SIP, even if unexpected increases in VMT occur after the SIP is adopted. This budget protects the Denver area against future violations of the CO NAAQS in the face of growing VMT. If the budget cannot be met, DRCOG cannot adopt any new plans and TIPs, and no new regionally significant projects can be approved. Thus, failure to meet the budget has the same or greater effect as the imposition of highway sanctions under section 179 of the Act. Second, it is important to note that virtually all of the growth in the metro area has occurred not in the downtown area, where the violations of the NAAQS have been monitored, but in outlying portions of the metro area. Thus, EPA would expect that VMT in the downtown area would increase at a lower rate than VMT for the metro area as a whole. This is supported by traffic counts at locations near downtown, which show that traffic in the central area increased at a rate of approximately 2-3% per year between 1990 and 1995, even though DRCOG estimates that traffic has increased approximately 4.5% per year regionwide. Finally, the air quality trends information submitted with the State's March 1996 milestone report shows that the Denver area is ahead of schedule to attain the CO NAAQS even with the higher-than-expected estimates of daily VMT.

Based on its conclusion that the attainment demonstration was inadequate, this commentor further concluded that the control strategies submitted with the SIP are insufficient to provide for attainment of the NAAQS. EPA's general response to this assertion is that the attainment demonstration is adequate, and that the modeling summarized in Chapter XII of the SIP and submitted to EPA demonstrates that the SIP will provide for attainment with the control measures included in the SIP.

The commentor stated that the SIP does not include a requirement that gasoline sold during the winter months include a level of oxygen sufficient to attain the NAAQS. As discussed above, the SIP includes a requirement for a 3.1% minimum oxygen content; the attainment demonstration shows that this level of oxygen is necessary and

sufficient to provide for attainment of the NAAQS.

The commenter stated that there is no indication that the State will apply the requirements for content and analysis of transportation plans, programs and projects contained in the conformity regulations. These requirements for nonattainment areas classified as serious and above are enforceable through the EPA/DOT conformity regulation, and DRCOG must comply with them when they take effect. There is no requirement in the conformity rule or in the Act that these provisions be incorporated into the CO SIP. However, they are mentioned on page I-4 of the SIP.

The commenter stated that the SIP does not satisfy section 110(a)(2) of the Act. As outlined in detail in the Technical Support Document for EPA's proposed action, the SIP does satisfy the SIP content requirements of section 110(a)(2).

The commenter stated that the SIP does not contain adequate measures to control stationary source emissions. Stationary point source emissions represent only 1.1% of base case emissions (based on actual emissions) and 5.6% of attainment year emissions (based on allowable emissions). None of the major sources are located in close proximity to the downtown monitors which record high concentrations, and these sources have little or no impact on Denver's ability to attain the NAAQS. However, stationary point sources of CO are regulated by Colorado Regulation No. 1 (Particulates, Smokes, CO and Sulfur Oxides). As noted above, woodburning is already regulated by Regulation No. 4; woodburning also has very little impact on the downtown monitoring sites. The remaining stationary sources of emissions are natural gas combustion and structural fires, which contribute a total of less than 1% to the attainment year inventory and again have very little impact on the high concentration monitoring sites.

The commenter stated that the SIP should include a mandatory employer-based trip reduction program, or demonstrate that such a program is not necessary to demonstrate attainment of the NAAQS. As noted in the proposal, Congress revised the Act in 1995 to make submittal of trip reduction programs voluntary. Thus, EPA could not require the State to submit such a program even if the attainment demonstration were to be found inadequate.

The commenter noted that the SIP does not contain an adequate milestone, nor does it contain an economic

incentive program for implementation should the milestone not be met.

Neither the Act nor EPA policy establish requirements for milestones, so the State was free to adopt its 1995 base case emission inventory as the milestone. The base case represents progress toward attainment (emissions in the 1995 base case were substantially lower than 1990 emissions), which is the intent of this requirement of the Act. Also, the Act does not require submittal of an economic incentive program until after either (1) the milestone has been missed or (2) the Denver area fails to attain by December 31, 2000. Thus, the SIP is not deficient in this regard.

Finally, the commenter stated that EPA should expressly incorporate the baseline (pre-existing) control strategies in its approval of this SIP, that EPA should make it clear that its approval of the SIP is based on the understanding that these control strategies will remain in place, and that EPA should withdraw its approval of the SIP should these control strategies be weakened. As noted in the proposal, the baseline strategies relied upon in the attainment demonstration have already been incorporated into the Colorado SIP, making them federally enforceable; the new control strategies will also be incorporated into the SIP with EPA's final action on the SIP. EPA's approval is based on the enforceability of these measures and the SIP's stated intention that these measures continue to be implemented. If, subsequent to EPA approval, control measures are weakened or discontinued, EPA's available responses include making a finding of SIP non-implementation under section 179(a)(4) and/or section 113(a)(2) of the Act, or making a finding of SIP inadequacy and issuing a call for a SIP revision under Section 110(k)(5) of the Act. EPA believes that these mechanisms, along with EPA's and citizens' ability to directly enforce SIP requirements, are adequate to ensure that pre-existing control measures continue to be implemented.

#### *Approval of the SIP*

While several parties requested that EPA disapprove the SIP, for reasons discussed above, two commentors supported EPA's approval of the SIP. EPA is proceeding with final approval of the CO SIP for the reasons discussed above and in our July 9, 1996 and December 6, 1996 notices of proposed rulemaking.

#### III. Implications of Today's Final Action

In today's action, EPA is approving SIP revisions submitted by the Governor

on July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995. Specifically, EPA is (1) approving the July 11, 1994 attainment demonstration, VMT tracking and forecasting program, TCM, and contingency measures submittals for Denver; (2) approving the July 13, 1994 attainment demonstration and contingency measures submittals for Longmont; (3) approving the control strategies for Denver, including the September 29, 1995 submittal of revisions to Regulations 11 and 13 (I/M and oxygenated fuels); and (4) approving the further revisions to Regulation 13 submitted on December 22, 1995 that shorten the effective period of the oxygenated fuels program. For the reasons discussed in Section II of this document, EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

In this document, EPA is also making a finding that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and is revising the area's classification for carbon monoxide in 40 CFR Part 81 from Moderate to Serious. This finding is based on air quality data revealing more than one exceedance of the CO NAAQS during calendar year 1995, resulting in a design value higher than the NAAQS for the period 1994-95. By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether CO nonattainment areas attained the NAAQS, and to reclassify those that did not.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Act. EPA has determined that this action conforms with those requirements.

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 any 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.

#### IV. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the

EO. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's SIP-related actions have been classified as Table 3 actions for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted these regulatory actions from EO 12866 review.

Likewise, EPA has determined that today's finding of failure to attain would result in none of the effects identified in section 3(f) of the EO. Under Section 186(b)(2) of the Clean Air Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

#### V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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 that are less than 50,000.

SIP revision 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 process does not impose any new requirements, EPA certifies that this final rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. 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, 256-266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under Section 186(b)(2) of the CAA do not, in and of themselves, create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

#### 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 determined that today's final approval actions do 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. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

Likewise, EPA believes, as discussed in section IV of this document, that the finding of failure to attain and reclassification to Serious are factual determinations based upon air quality data and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

#### VII. Small Business Regulatory Enforcement Fairness Act (SBREFA)

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 of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### VIII. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 31, 1997.

Max H. Dodson,

*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)(80) to read as follows:

**§ 52.320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(80) On July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995, the Governor of Colorado submitted revisions to the Colorado State Implementation Plan (SIP) to satisfy those CO nonattainment area SIP

requirements for Denver and Longmont, Colorado due to be submitted by November 15, 1992, and further revisions to the SIP to shorten the effective period of the oxygenated fuels program. EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

(i) Incorporation by reference.

(A) Regulation No. 11, Motor Vehicle Emissions Inspection Program, 5 CCR 1001-13, as adopted on September 22, 1994, effective November 30, 1994. Regulation No. 13, Oxygenated Fuels

Program, 5 CCR 1001-16, as adopted on October 19, 1995, effective December 20, 1995.

**PART 81—[AMENDED]**

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. In 81.306, the Carbon Monoxide table is amended by revising the entry for "Denver-Boulder Area" to read as follows:

**§ 81.306 Colorado.**

\* \* \* \* \*

**COLORADO—CARBON MONOXIDE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
<p>Denver-Boulder Area:</p> <p>The boundaries for the Denver nonattainment area for carbon monoxide (CO) are described as follows: Start at Colorado Highway 52 where it intersects the eastern boundary of Boulder County; Follow Highway 52 west until it intersects Colorado Highway 119; Follow northern boundary of Boulder city limits west to the 6000-ft. elevation line; Follow the 6000-ft. elevation line south through Boulder and Jefferson Counties to US 6 in Jefferson County; Follow US 6 west to the Jefferson County-Clear Creek County line; Follow the Jefferson County western boundary south for approximately 16.25 miles; Follow a line east for approximately 3.75 miles to South Turkey Creek; Follow South Turkey Creek northeast for approximately 3.5 miles; Follow a line southeast for approximately 2.0 miles to the junction of South Deer Creek Road and South Deer Creek Canyon Road; Follow South Deer Creek Canyon Road northeast for approximately 3.75 miles; Follow a line southeast for approximately five miles to the northern-most boundary of Pike National Forest where it intersects the Jefferson County-Douglas County line; Follow the Pike National Forest boundary southeast through Douglas County to the Douglas County-El Paso County line; Follow the southern boundary on Douglas County east to the Elbert County line; Follow the eastern boundary of Douglas County north to the Arapahoe County line; Follow the southern boundary of Arapahoe County east to Kiowa Creek; Follow Kiowa Creek northeast through Arapahoe and Adams Counties to the Adams-Weld County line; Follow the northern boundary of Adams County west to the Boulder County line; Follow the eastern boundary of Boulder County north to Highway 52.</p>				
Adams County (part) .....		Nonattainment .....	4/9/97	Serious.
Arapahoe County (part) .....		Nonattainment .....	4/9/97	Serious.
Boulder County (part) .....		Nonattainment .....	4/9/97	Serious.
Denver County (part) .....		Nonattainment .....	4/9/97	Serious.
Douglas County (part) .....		Nonattainment .....	4/9/97	Serious.
Jefferson County (part) .....		Nonattainment .....	4/9/97	Serious.

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 97-5765 Filed 3-7-97; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 82**

[FRL-5701-1]

**Protection of Stratospheric Ozone**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of acceptability.

**SUMMARY:** This notice expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

**EFFECTIVE DATE:** March 10, 1997.

**ADDRESSES:** Information relevant to this notice is contained in Air Docket A-91-42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone:

(202) 260-7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:**

Sally Rand at (202) 233-9739 or fax (202) 233-9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296-1996; EPA World Wide Web Site at <http://>