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 impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 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 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 the 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 May 19, 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), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 24, 1997.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (71) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(71) On March 6, 1996, the Director of the Washington State Department of Ecology (Ecology) submitted to the Regional Administrator of EPA a revision to the Puget Sound Air Pollution Control Agency Regulations, Regulations I, II, and III.

(i) Incorporation by reference.

(A) Letter dated August 6, 1996 from the Department of Ecology to EPA revising the Puget Sound Air Pollution Control Agency Regulations; Regulation II Section 3.11 (Coatings and Ink Manufacturing), effective on May 16, 1996; and Regulation III Section 3.01 (Hard and Decorative Chromium Electroplating and Chromium Anodizing), effective on July 18, 1996.

[FR Doc. 97–7098 Filed 3–19–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[CO–001–0015a; FRL–5700–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to Colorado's prevention of significant deterioration (PSD) permitting requirements in Regulation No. 3, which were submitted as revisions to the State Implementation Plan (SIP) by the Governor on August 1, 1996. The revisions were submitted mainly to address the replacement of the total suspended particulate (TSP) increments with increments for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10). EPA is also deleting the TSP area designation table and revising the PM–10 area designation table in 40 CFR part 81 for Colorado. With the PM–10 increments becoming

effective in these areas, the TSP area designations no longer serve any useful purpose relative to PSD.

Also in this document, EPA is amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado.

DATES: This action will become effective on May 19, 1997 unless adverse or critical comments are received by April 21, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal 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; Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, at (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

In this document, EPA is acting on revisions to the PSD permitting program in Regulation No. 3 for the State of Colorado. The State's revisions were generally made to address the replacement of the TSP increments with increments for PM–10 in the Federal PSD permitting requirements in 40 CFR 51.166, which were promulgated by EPA on June 3, 1993 (58 FR 31622–31638). The State also made other minor administrative changes to Regulation No. 3. This document evaluates the State's submittal for conformity with the corresponding Federal regulations and the requirements of the Clean Air Act (Act). In addition, this document provides justification regarding the removal of the TSP area designation table in 40 CFR part 81 for Colorado.

Also in this document, EPA is amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado. EPA is making this correction pursuant to section 110(k)(6) of the Act.

II. This Action

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

A public hearing to entertain public comment on the initial PSD SIP revision was held by the State of Colorado on August 17, 1995, and the rule revisions were subsequently adopted by the State. The rule revisions were formally submitted to EPA for approval on August 1, 1996. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated September 26, 1996 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

2. Evaluation of State's Submittal

a. PM–10 Increment Revisions. As discussed above, EPA promulgated increments for PM–10 on June 3, 1993 (see 58 FR 31622–31638). EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as to the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. EPA or its delegated State programs were required to begin implementation of the increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (such as Colorado) will be the date on which EPA approves the revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), States with SIP-approved PSD programs were required to adopt the PM–10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM–10 increments, see the June 3, 1993 Federal Register notice.

In order to address the PM–10 increments, Colorado revised the following sections of its PSD permitting regulations in Colorado Regulation No. 3:

(1) The definition of ''baseline area'' in Section I.B.10. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(b)(15)(iii);

(2) The definition of ''minor source baseline date'' in Section I.B.35. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(b)(14)(iv);

(3) The definition of ''net emissions increase'' in Section I.B.37. of Part A of Regulation No. 3 was revised to conform with 40 CFR 51.166(3)(iv);

(4) The State added language to Section IV.D.3.b.(v) of Part B of Regulation No. 3 to address the provisions in 40 CFR 51.166(i)(12), which allows a State to provide an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect;

(5) The State revised the increments tables in Section VII.A.1. of Part B of Regulation No. 3 to incorporate the PM–10 increments in 40 CFR 51.166(c);

(6) The State revised Section X.D. of Part B of Regulation No. 3 to address the changes reflecting PM–10 increments in 40 CFR 51.166(p)(4); and

(7) The State revised Section V.D.11. of Part A of Regulation No. 3, which discusses when modeling is required to determine ambient equivalence of emissions trades, to replace the TSP Class I increments with the PM–10 Class I increments (for determining whether an ambient impact is significant).

EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993.

b. TSP Area Deletions. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, the EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to

as ''section 107 areas''), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable [40 CFR 52.21(i)(3)]. Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

EPA revised the primary and secondary NAAQS for particular matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., ''PSD areas,'' and to provide the geographic link necessary for implementation of the PM–10 increments.[2]

Thus, in the June 3, 1993 Federal Register notice in which EPA promulgated the PM–10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM–10 increments. In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

The following TSP nonattainment areas in Colorado are included in nonattainment designations for PM–10: the Boulder Urbanized Area and the Denver Urbanized Area. The State has adopted a PM–10 SIP for the Denver Metropolitan area (which includes the Boulder area). Thus, EPA believes it is appropriate at this time to delete the TSP area designations for these areas.

Colorado has three areas listed in 40 CFR part 81 as nonattainment for the TSP standards but which are not designated nonattainment for PM–10: the cities of Fort Collins and Greeley, the Colorado Springs 3–C urbanized area, and the Grand Junction urbanized area. EPA has reviewed the existing approved particulate matter control strategies for these areas and has determined that the deletion of the TSP nonattainment status for these areas will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP designations for these areas. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for these areas, it must submit a SIP revision to EPA for approval that must meet all applicable Federal requirements.

As stated above, the State has adopted adequate provisions in its PSD program for the implementation of the PM–10 increments. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.306.

c. Other Administrative Revisions. As discussed above, the State made other minor administrative revisions to Regulation No. 3 in its August 1, 1996 SIP submittal. These revisions included correction of errors in the numbering of certain sections, errors which occurred in the printing of Regulation No. 3 in the Code of Colorado Regulations, and other minor deficiencies. Specifically in Part A of Regulation No. 3, the State revised the numbering of the definitions in Section I.B., Section I.B.36., Sections IV.B. and C., and Section V.C.1. Regarding Section I.B. which contains the definitions applicable to Regulation No. 3, EPA noted additional numbering errors in this section which the State needs to correct. Therefore, EPA is not approving the revisions to this section at this time, with the exception of those specific definitions that were revised to reflect the PM–10 PSD increments (as discussed in Section II.A.2.a. of this document).

EPA believes it is appropriate to approve all of the other minor revisions at this time, with the exception of Section IV.C. of Part A. This provision in this section, which allows for emissions trading under a construction or title V operating permit cap, was originally submitted as a revision to the SIP on November 12, 1993 along with many other revisions to Regulation No. 3. In EPA's January 21, 1997 Federal Register promulgating action on the State's November 12, 1993 submittal, EPA did not take action on Section IV.C. of Part A of Regulation No. 3. For the reasons stated in that Federal Register, EPA is not taking action on the revisions to Section IV.C. in this action. (See 62 FR 2911 for further details.)

B. Amendment to 40 CFR 52.343(a)(3)

On September 2, 1986, EPA approved Colorado's PSD regulations (51 FR 31125). In that approval, EPA indicated that the Federal PSD regulations would remain in effect for sources that had previously received PSD permits from EPA. On June 15, 1987, EPA issued a correction notice regarding the approval of Colorado's PSD regulations (52 FR 22638). In that correction notice, EPA revised language in 40 CFR 52.343(a)(10)[3] to clarify that EPA was retaining PSD authority not only for sources which received a PSD permit from EPA before September 2, 1986, but also for sources that constructed before EPA's September 2, 1986 approval of Colorado's PSD regulations. EPA explained that this correction was needed because Colorado's PSD regulations allowed Colorado to issue PSD permits only to sources that applied for a permit after EPA's approval of Colorado's PSD program. EPA further explained that neither EPA nor Colorado intended to create any gaps in the PSD program through EPA approval of the Colorado regulations.

The approval language in the June 15, 1987 correction notice has led to some confusion. The correction notice focused only on the status of sources as of the date of approval of Colorado's PSD program and did not consider future source changes or permit applications. For example, major sources subject to EPA's PSD regulations may have constructed or modified before September 2, 1986 without applying for a PSD permit. If

[1] The EPA did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments ''not more than 2 years after the date of promulgation of * * * standards.'' Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

[2] It should be noted that 40 CFR part 81 does not presently list all section 107 areas for PM–10. Only those areas designated ''nonattainment'' appear in the State listings. This is because under the listings published by EPA in the Federal Register on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM–10 nonattainment areas designated by operation of law, EPA did not include a new PM–10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

[3] Note: 40 CFR 52.343(a)(10) was redesignated as 40 CFR 52.343(a)(4) on August 18, 1994 (59 FR 42506), and 40 CFR 52.343(a)(4) was redesignated as 40 CFR 52.343(a)(3) on January 21, 1997 (62 FR 2914).

these sources were to apply to Colorado for a PSD permit after September 2, 1986, Colorado would have authority under Colorado law to issue PSD permits to such sources. However, the language in EPA's June 15, 1987 correction notice might be read to require that EPA issue permits to such sources. This would be contrary to EPA's intent in issuing the correction notice which was to eliminate any gaps in coverage, not to retain authority in instances in which Colorado has the authority to issue PSD permits under State law. In addition, the correction notice did not address the question of which agency should issue permits to sources that received permits from EPA before September 2, 1986, but that seek a major modification after September 2, 1986. Similar questions pertain to major sources which constructed before EPA's PSD program became effective, and then later seek a major modification.

Accordingly, EPA believes it is appropriate to correct the language currently in 40 CFR 52.343(a)(3) to clarify that the retention of EPA's PSD authority applies only to sources which constructed prior to September 2, 1986 and which have not otherwise subjected themselves to Colorado's PSD permitting regulations after September 2, 1986, either through application to Colorado for a PSD permit (in the case of those sources which improperly constructed without obtaining a PSD permit) or through application to Colorado for a major modification to the source. This correction is consistent with the manner in which EPA and Colorado have been implementing the PSD program within Colorado. EPA is making this correction under section 110(k)(6) of the Act.

Note that this action does not alter Colorado's PSD permitting jurisdiction. The State does not have authority to issue PSD permits to new or modified stationary sources proposing to locate within the exterior boundaries of Indian reservations or on Indian lands; EPA retains PSD permitting authority for such sources. [See 40 CFR 52.343(a)(1) & (2).]

III. Final Action

Based on the review and justification provided in this document and the accompanying Technical Support Document (TSD), EPA is approving the SIP revision regarding PSD permitting submitted by the State of Colorado on August 1, 1996. However, for the reasons discussed above, EPA is not acting on the minor administrative changes made to Section I.B. of Part A of Regulation No. 3, nor is EPA acting on Section IV.C. of Part A of Regulation No. 3 at this time. In addition, EPA is deleting Colorado's TSP area designation table in 40 CFR 81.306, and EPA is revising the PM–10 area designation table in 40 CFR 81.306 to add the following areas designated as unclassifiable for PM–10:[4] Air Quality Control Region (AQCR) 1, AQCR 2, AQCR 3 (excluding the Denver Metropolitan moderate PM–10 nonattainment area), AQCR 4, AQCR 5, AQCR 6 (excluding the Lamar moderate PM–10 nonattainment area), AQCR 7, AQCR 8, AQCR 9 (excluding the Pagosa Springs moderate PM–10 nonattainment area), AQCR 10 (excluding the Telluride moderate PM–10 nonattainment area), AQCR 11, AQCR 12 (excluding the Aspen/Pitkin County and Steamboat Springs Area Airshed moderate PM–10 nonattainment areas), and AQCR 13 (excluding the Canon City moderate PM–10 nonattainment area). Since these AQCRs encompass the entire State, EPA is deleting the ''Rest of State'' PM–10 area.

EPA is also amending the language in 40 CFR 52.343(a)(3) to further clarify which sources EPA retains PSD permitting authority over in the State of Colorado.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 19, 1997 unless, by April 21, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 19, 1997.

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.

[4] EPA is designating the PM–10 areas as unclassifiable, rather than attainment, at this time to be consistent with section 107(d)(4)(B) of the Act which stated that any area which was not initially designated as nonattainment for PM–10 shall be designated unclassifiable. EPA will consider redesignating these areas to ''attainment'' status at a later date. Both ''unclassifiable'' and ''attainment'' areas have the same status for PSD purposes.

IV. 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 May 19, 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

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 27, 1997.

Patricia D. Hull,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for parts 52 and 81 continue to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 52—[AMENDED]

2. Section 52.320 is amended by adding paragraph (c)(81) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(81) On August 1, 1996, the Governor of Colorado submitted revisions to the prevention of significant deterioration regulations in Regulation No. 3 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and to make other minor administrative revisions.

(i) Incorporation by reference.

(A) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/17/95, effective 10/30/95, as follows: Part A, Section I.B., as follows: the definition of ''baseline area'' in subsection 10, the definition of ''minor source baseline date'' in subsection 35, and the definition of ''net emissions increase'' in subsection 37; Part A: Sections IV.B., V.C.1., and V.D.11.c.; Part B: Sections IV.D.3.b.(v), VII.A.1., and X.D.

3. Section 52.343 is amended by revising paragraph (a)(3) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(a) * * *

(3) Sources which constructed prior to September 2, 1986 and which have not otherwise subjected themselves to Colorado's PSD permitting regulations after September 2, 1986, either through application to Colorado for a PSD permit (in the case of those sources which improperly constructed without obtaining a PSD permit) or through application to Colorado for a major modification to the source.

* * * * *

PART 81—[AMENDED]

4. Section 81.306 is amended by removing the table for ''Colorado-TSP'' and by removing the entry in the table for ''Colorado-PM–10'' for ''Rest of State.''

5. Section 81.306 is amended by adding entries at the end of the table for ''Colorado-PM–10'' for ''AQCR 1'', ''AQCR 2,'' ''AQCR 3,'' ''AQCR 4,'' ''AQCR 5,'' ''AQCR 6,'' AQCR 7,'' AQCR 8,'' ''AQCR 9,'' ''AQCR 10,'' ''AQCR 11,'' ''AQCR 12,'' and ''AQCR 13'' to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	*		
AQCR 1	11/15/90	Unclassifiable		
AQCR 2	11/15/90	Unclassifiable		
AQCR 3 (excluding the Denver Metropolitan PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 4	11/15/90	Unclassifiable		
AQCR 5	11/15/90	Unclassifiable		
AQCR 6 (excluding the Lamar PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 7	11/15/90	Unclassifiable		
AQCR 8	11/15/90	Unclassifiable		
AQCR 9 (excluding the Pagosa Springs PM–10 nonattainment area)	11/15/90	Unclassifiable		
AQCR 10 (excluding the Telluride PM–10 nonattainment area)	11/15/95	Unclassifiable		
AQCR 11	11/15/95	Unclassifiable		

COLORADO—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
AQCR 12 (excluding the Aspen/Pitkin County and Steamboat Springs Area Airshed PM–10 nonattainment areas).	11/15/90	Unclassifiable		
AQCR 13 (excluding the Canon City PM–10 nonattainment area)	1/15/90	Unclassifiable		

[FR Doc. 97–7096 Filed 3–19–97; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300461; FRL–5595–3]

RIN 2070–AC78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the insecticide tebufenozide in or on the raw agricultural commodities sugar beet roots, sugar beet tops, sugar beet molasses, sugar beet refined sugar and sugar beet dried pulp in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on sugar beets in California. This regulation establishes maximum permissible levels for residues of tebufenozide on sugar beets. These tolerances will expire on March 30, 1998.

DATES: This regulation becomes effective March 20, 1997. This entries in the table expire on March 30, 1998. Objections and requests for hearings must be received by EPA on May 19, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300461], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300461], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300461]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on sugar beet roots at 0.3 parts per million (ppm), sugar beet tops at 0.6 ppm, sugar beet dried pulp at 6.0 ppm, and sugar beet molasses and refined sugar at 4.0 ppm. These tolerances will expire by EPA on March 30, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub.L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new FFDCA section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' FFDCA section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency