

have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates

Under Sections 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 promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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) of the Regulatory Flexibility Act 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 June 16, 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: March 8, 1997.

John P. DeVillars,

Regional Administrator, EPA Region I.

Part 52 of 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 OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(50) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994. The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA is approving only the following portions of these submittals: 15 Percent Plan—the EPA is approving the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA is approving the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA is concurrently disapproving portions of these SIP submissions, as discussed within § 52.2084(a)(2).

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated March 15, 1994,

submitting a revision to the Rhode Island State Implementation Plan.

2. Section 52.2084 is amended by adding paragraph (a)(2) to read as follows:

§ 52.2084 Rules and Regulations.

* * * * *

(a) * * *

(2) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994. The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA is disapproving the following portions of these SIP submittals: 15 Percent Plan—Emission reductions claimed from motor vehicle inspection and maintenance program, non-CTG sources, air toxic sources, and plant closures (0.05 tons per day disapproved out of 0.84 tons claimed). Contingency Plan—a portion of the credit claimed from consumer and commercial products (0.8 tons per day disapproved out of 1.9 tons claimed), and a portion of the credit claimed from AIM coatings (0.5 tons per day disapproved out of 2.4 tons claimed).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0016; FRL-5802-6]

Clean Air Act Approval and Promulgation of PM₁₀ Implementation Plan for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) in the Denver area. The SIP revisions were submitted to satisfy certain Federal requirements for an approvable moderate nonattainment area PM₁₀ SIP for Denver and, among other things, contain enforceable control measures. The bulk of the revisions were submitted on March 30, 1995. Revisions to Colorado Regulation No. 13 (oxygenated fuels), which is one of the control measures relied on in the SIP, were adopted by the Air Quality Control Commission

(AQCC) on October 19, 1995 and submitted to EPA on December 22, 1995. EPA proposed to approve the March 30, 1995 submission on October 3, 1996. On December 6, 1996, EPA published a supplemental proposal to approve the Denver PM₁₀ SIP based on the October 19, 1995 version of Regulation No. 13 rather than the prior version. This action supersedes EPA's July 25, 1994, final limited approval of certain control measures found in the State's June 7, 1993 Denver PM₁₀ SIP submittal.

DATES This action will become effective on May 19, 1997.

ADDRESSES: Copies of the State's submittal 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; Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. 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: Callie Videtich at (303) 312-6434.

SUPPLEMENTARY INFORMATION:

I. Background

The Denver, Colorado area was designated nonattainment for PM₁₀ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990.¹ See 56 FR 56694 (Nov. 6, 1991) and 40 CFR 81.306 (specifying PM₁₀ nonattainment designation for the Denver metropolitan area). The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in Part D, Subparts 1 and 4, of Title I of the Act.²

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM₁₀

nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale. In this rulemaking action on the Colorado moderate PM₁₀ SIP for the Denver nonattainment area, EPA is applying its interpretations considering the specific factual issues presented.

Those States containing initial moderate PM₁₀ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following plan provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM₁₀ nonattainment areas were required to submit a new source review (NSR) permit program for the construction and operation of new and modified major stationary sources of PM₁₀ by June 30, 1992 (see section 189(a)). On January 14, 1993, the State submitted regulation revisions for the construction of new and modified major stationary sources. On August 18, 1994, EPA partially approved the State's NSR program for the Denver PM₁₀ nonattainment area because the State had not yet submitted NSR provisions for sources of PM₁₀ precursors (i.e., NO_x and SO₂) in the

Denver area (see 59 FR 42300). On August 25, 1994, Colorado submitted additional NSR provisions for precursor emissions. EPA took final action on that SIP submittal on January 21, 1997 (62 FR 2910). Thus, the State has a fully-approved NSR permitting program in place for the Denver moderate PM₁₀ nonattainment area.

States were also required to submit contingency measures for PM₁₀ moderate nonattainment areas by November 15, 1993. The contingency measures for the Denver PM₁₀ nonattainment area were initially submitted by the Governor on December 9, 1993. However, those control measures were later incorporated into the revised March 30, 1995 PM₁₀ SIP to help demonstrate attainment and maintenance. Thus, the State developed new contingency measures, and on November 17, 1995, the Governor submitted those measures to EPA. EPA took direct final rulemaking action on the contingency measures SIP submittal on September 23, 1996 (61 FR 49682). Because no adverse comments were received for the direct final rulemaking, the rule became effective on December 23, 1996.

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

During review of the technical information supporting the June 1993 SIP, EPA examined information which raised concerns about the accuracy of the SIP's attainment demonstration. The SIP's technical support documentation suggested that the contribution from PM₁₀ "precursors" (i.e., NO_x and SO₂) in the base year winter season may have been underestimated. Since the attainment demonstration provided with that SIP predicted a value of 149.9 µg/m³ over 24 hours, virtually any increase in precursor PM₁₀ levels would result in predicted violations of the 24-hour standard.

In the December 20, 1993, proposed rulemaking action, EPA requested public comment on its proposal to grant conditional approval of the SIP in light of the precursor issue. EPA reviewed the information submitted during the public comment period and concluded that precursors were underestimated by 5.4 µg/m.³ Based upon this finding, EPA

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

² Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM₁₀ nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

delayed taking final action on the proposed conditional approval to allow the State an opportunity to develop additional controls to offset this increase. EPA never proceeded with the conditional approval. On March 30, 1995, the Governor submitted a SIP revision intended to provide controls to offset the increase in precursor emissions and provide credible attainment and maintenance demonstrations. Based on this SIP revision, EPA proposed approval of the PM₁₀ SIP on October 3, 1996 (61 FR 51631).

On July 18, 1995, and April 22, 1996, the Governor submitted additional revisions to the SIP which establish mobile source emissions budgets for PM₁₀ and NO_x. These budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Act. EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated. EPA proposed approval of these emissions budgets on October 3, 1996 along with the Denver PM₁₀ SIP. However, EPA is not taking final action on the two emissions budgets in order to more thoroughly consider comments received during the public comment period. These emissions budgets are not necessary to meet the Act's requirements for moderate PM₁₀ nonattainment areas and, therefore, will be addressed in a separate rulemaking.

EPA became aware after proposing approval of the PM₁₀ SIP that the version of Regulation No. 13 (oxygenated fuels) that was one of the control measures relied on in the Denver PM₁₀ SIP had been replaced by the October 19, 1995 version of Regulation No. 13. The Governor submitted this version to EPA as a SIP revision on December 22, 1995. The October 19, 1995 version eliminates the last two weeks from the program and calls for a 3.1% program rather than a 2.7% program. On December 6, 1996 (61 FR 64647) EPA published a supplemental document that, among other things, proposed to approve the Denver PM₁₀ SIP with the October 19, 1995 version of Regulation No. 13 substituted for the prior version. EPA received no comments regarding this aspect of the supplemental document and is proceeding with its approval of the Denver PM₁₀ SIP based on the

October 19, 1995 version of Regulation No. 13.

EPA has already approved the October 19, 1995 version of Regulation No. 13 as part of the Denver carbon monoxide (CO) SIP. The acting Regional Administrator for EPA Region VIII signed a **Federal Register** document approving the Denver CO SIP on January 31, 1997, but at the time this document was prepared, that approval had not yet been published in the **Federal Register**.

II. Response to Public Comments

EPA received numerous comments on its proposed approval of the Denver PM₁₀ SIP and the PM₁₀ and NO_x emissions budgets. In this document, EPA is addressing only those comments submitted on the Denver PM₁₀ SIP. The comments received regarding the emissions budgets will be addressed in a later rulemaking action. The comments received on the Denver PM₁₀ SIP and EPA's responses follow.

1. The SIP revision fails to contain control measures to limit motor vehicle emissions from current vehicle miles traveled (VMT) or revised projections of VMT growth and does not provide for attainment.

As EPA noted in its approval of the Denver CO SIP, the Denver Regional Council of Governments (DRCOG) produced revised estimates of daily vehicle miles traveled 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). The commentator referred to these revised estimates and suggested that EPA should disapprove the SIP on this basis, or conditionally approve the SIP and request that the State submit additional controls.

EPA believes that the increases in VMT are not sufficient to warrant revisions to the PM₁₀ SIP or its disapproval. EPA believes that it is reasonable to allow some margin of error for VMT projections in attainment demonstrations. This is because these projections are by their nature inexact. For CO SIPs, EPA has recognized this in the General Preamble and other guidance (see 57 FR 13532 and Section 187 VMT Forecasting and Tracking Guidance, January 1992). EPA applied

these policies in its approval of the Denver CO SIP and believes it is reasonable to extend them to the Denver PM₁₀ SIP.

It must be emphasized that only part of the estimated VMT increase is due to actual growth in traffic in the Denver region; the rest is due to use of improved methodologies for traffic counting in the region. For this reason, EPA believes it is more appropriate to consider the impact of actual growth in VMT by examining counts based on a consistent methodology, that is, the HPMS-based VMT Tracking Program. In November 1996, Colorado submitted its 1996 report of 1995 actual annual VMT, as required by section 187 of the Act for CO SIPs. This report showed that actual 1995 VMT were 4.4% greater than the CO 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 for CO SIPs (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, EPA is not requiring the State to revise either the CO or PM₁₀ SIPs.

One other factor that should be noted is 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 region wide.

2. Enforceability requirements of the Act are not satisfied for some control measures. EPA and the State lack enforcement authority for woodburning control measures relied on in the SIP.

The commentator indicates that although the State's woodburning program requires that certification programs for new or replaced stoves be enforced through local building codes, there is no provision for enforcement by the State in the event the local government fails to adopt the certification requirement or fails to enforce the code. In fact, Regulation No. 4, Section II.A, prohibits the sale of wood stoves that do not meet the

emission standards of 40 CFR 60.532(b)(1) or (2). There is no exemption in the regulation for areas with local prohibitions. Thus, the State has the ability to directly enforce the certification program for woodburning stoves. And, because this provision will be part of the SIP, EPA and citizens will also be able to enforce it.

For new and remodeled woodburning fireplaces, it is true that local building codes and ordinances serve as the primary mechanism for implementation and enforcement. However, Section VIII of Regulation No. 4 requires the local jurisdictions to implement and enforce the local codes and ordinances. The State has the authority to enforce this requirement for implementation and enforcement. (See 25-7-115(l)(a), C.R.S.) Because this requirement is being approved by EPA, EPA and citizens will also have the ability to enforce it. Also, it appears that because these local codes and ordinances have been adopted as part of the SIP, the State may have the ability to enforce them directly pursuant to 25-7-128(l), C.R.S. EPA is approving them as part of the SIP, which will enable EPA and citizens to enforce them.

For any local jurisdiction that has not adopted the relevant provisions for fireplaces into a building code or ordinance as of January 1, 1993, Section VII.A of Regulation No. 4 prohibits the installation of a fireplace unless it is of a type specified in Section VII.A. The State may enforce this requirement. Because EPA is approving this requirement, EPA and citizens will also have the ability to enforce it.

3. VMT reduction measures are not adopted measures and are not enforceable.

One commentator mentioned that several programs and projects administered by the Regional Transportation District (RTD) in Denver were included in the SIP modeling, but were not adopted as transportation control measures and/or made enforceable. These projects include RTD's MAC light rail line, bus service to Denver International Airport, and three discount/free bus pass programs. All of these programs have been implemented, and the SIP's assumption that these activities would continue to be implemented seems reasonable to EPA. The MAC light rail line is a vital transportation link to downtown and serves as the starting point for a second line proceeding down the southwest corridor, which has been approved and is under development, and a proposed third line in the southeast corridor, which is currently being evaluated as part of a Major Investment Study in that

corridor. Bus service to the airport has been implemented, and there are no current plans to discontinue it. The discount bus pass programs mentioned in the SIP have proven quite popular, helping to ensure their continuation. It seems more reasonable for the SIP to assume that these RTD activities would continue than to assume they would be terminated.

States are authorized to base SIP emission inventories on reasonable assumptions regarding the makeup of the transportation network in future years. Most of the inputs to the transportation modeling process represent informed assumptions, including the extent and location of population and employment, speeds, mode choice, and participation in trip-reduction activities. The impacts of these assumptions by their nature are impractical to make enforceable; there are no mechanisms through which the SIP can force population growth to occur in one area and not another, or can force citizens to participate in carpools or ride the bus. Likewise, assumptions about the future transportation network are reflected in the transportation data used to generate the inventory, but are not practical to make enforceable. Each transportation project in the transportation plan and Transportation Improvement Program (TIP) would have to be included in the SIP, and the SIP would have to be revised each time a new plan and TIP were generated. Also, many projects which do not reduce VMT still have a localized benefit for air quality such as the E470 beltway, which reduces CO in the central metro area. However, it would be inappropriate to include a VMT- and emissions-generating project like E470 in an SIP as a control measure.

4. Modeling. One commentator criticized the accuracy of DRCOG's transportation modeling, and cited concerns from Environmental Defense Fund's Michael Replogle. The commentator did not supply a copy of Mr. Replogle's testimony and EPA does not have it in its possession. Thus, EPA has no basis to respond to specific concerns Mr. Replogle might have had. However, EPA believes the transportation modeling for the SIP was adequate and consistent with EPA guidance. EPA's guidance (Procedures for Preparing Emissions Projections, EPA-450/4-91-019, July 1991) establishes minimum criteria for network modeling which DRCOG has met. In fact, DRCOG has exceeded guidance requirements, which would allow the use of less robust methods than network modeling. For example, the New York City CO SIP (which EPA has also approved) was not

based on network modeling. EPA's guidance generally advises states to use the best tools they have available. Neither EPA's inventory nor SIP guidance is written in such a way as to advance the state of the art of VMT modeling in areas required to prepare SIPs or to require these areas to address every identifiable shortcoming with their particular modeling techniques. Regarding the commentator's assertions about VMT growth since the SIP was submitted, the reader should refer to EPA's response, above, regarding this issue.

5. The regional network. One commentator stated that the DRCOG regional transportation network could not be properly used for SIP purposes because of inaccurate assumptions made within the modeling regarding whether certain projects would or would not be built.

The commentator specifically noted that the construction of the final segment of E470 was not included in DRCOG's long-range transportation modeling, ostensibly because funding was not available for that project, while several light rail projects were included in the modeling even though funding for those projects is not certain. However, none of these projects were intended to be completed during the timeframe of the SIP's attainment and maintenance demonstrations (i.e., by the end of December 1998) and are not included in the SIP modeling. Thus, EPA's approval of the SIP is not affected in any way by the implementation or delay of these projects.

The commentator also states that its ALTLOP—alternative list of projects—would have produced lesser growth in PM₁₀ than DRCOG's list of projects. EPA notes that it cannot substitute its judgement for the State's or DRCOG's regarding which projects or controls to implement as long as the Act's requirements are met. The SIP demonstrates attainment and maintenance of the PM₁₀ standard with the mix of projects selected by DRCOG.

6. Monitoring and air sampling. A commentator indicated that further information would be forthcoming relating to continuity of monitoring, siting of monitors and whether tire wear particles are properly accounted for. EPA did not receive any further information on this subject and so has no basis upon which to respond. It should be noted that Colorado's State-wide SIP, which includes the Denver monitoring network, was reviewed and approved by EPA on September 23, 1993 (see 58 FR 49434) as meeting the requirements of 40 CFR Parts 53 and 58, and the appendices to Part 50.

7. Conformity. One commentator makes comments under this heading that go to the validity of the SIP. The commentator suggests that a value of 149.9 $\mu\text{g}/\text{m}^3$ is too close to the NAAQS of 150 $\mu\text{g}/\text{m}^3$ to be considered attainment, particularly when the projections used to effect this razor thin margin are acknowledged to have been "low". Regarding the 149.9 $\mu\text{g}/\text{m}^3$ value, EPA regulations dictate that this value is considered attainment of the standard. See 40 CFR 50.6 and Part 50, Appendix K. By "projections", EPA assumes the commentator is referring to the VMT projections relied on for the attainment and maintenance demonstrations. As explained in response to another comment, above, the difference between estimates of actual VMT and projections of VMT contained in the SIP falls within a reasonable margin of error and does not warrant a revision to or disapproval of the SIP. The reader should refer to the comment and response, above, for a more complete discussion of this issue.

The last sentence of the commentator's comment appears to relate to the emissions budgets. EPA is not acting on the budgets in this action and will defer its response until it acts on the budgets.

8. Other. One commentator endorsed EPA's proposed approval of the Denver element of the PM₁₀ SIP, citing air quality monitoring data collected since 1992 that is below the current standard as evidence that the plan is working. This comment requires no response.

III. This Action

EPA is approving the SIP revisions submitted by the Governor of Colorado for the purpose of bringing about the attainment of the NAAQS for PM₁₀. The revisions were submitted to satisfy certain federal requirements for moderate PM₁₀ nonattainment areas. The bulk of the revisions were adopted by the AQCC on October 20, 1994 with an amendment on December 15, 1994 and were submitted by the Governor on March 30, 1995. However, revisions to Regulation No. 13 (oxygenated fuels) were adopted by the AQCC on October 19, 1995 and submitted to EPA on December 22, 1995. EPA is basing its approval of the PM₁₀ SIP on this October 19, 1995 version of Regulation No. 13 rather than the version relied on in the March 30, 1995 submission. Also, the State submitted a number of technical support documents to EPA after the original June 7, 1993 PM₁₀ SIP submittal that explain or are relied on by the March 30, 1995 submittal and comprise part of the basis for EPA's approval. These documents were submitted on June 8, 1993, June 10, 1993, June 25, 1993, July 19, 1993,

August 5, 1993, September 3, 1993, September 21, 1993, October 20, 1993, December 12, 1993, January 19, 1994, December 23, 1994, March 3, 1995, and November 8, 1995.

It should be noted that the March 30, 1995 submission, in addition to including new control measures, also relies on control measures to which EPA granted limited approval on July 25, 1994 (59 FR 37698). The current action granting full approval to the PM₁₀ SIP supersedes EPA's limited approval. To avoid confusion, EPA is referencing in the regulatory materials that are part of this document both new provisions and provisions to which EPA gave limited approval in its July 25, 1994 action. These later provisions include portions of Regulation No. 1 and Regulation No. 4 that, through administrative error, EPA inadvertently failed to reference in the incorporation by reference section of the July 1994 action. To correct this clerical error, EPA is now incorporating all of Regulation No. 4, and all of Regulation No. 1 except Section V. As noted in EPA's action of December 3, 1986 (51 FR 43610), the sources subject to Section V of Regulation No. 1 are no longer operating, and thus, there is no reason to act on Section V.

EPA is approving the control strategies that are relied upon in the March 30, 1995 submission as well as the attainment and maintenance demonstrations contained therein. EPA views the following measures as reasonable, enforceable, and responsible for PM₁₀ emissions reductions in the Denver PM₁₀ nonattainment area: (1) Colorado Regulation No. 4 which regulates residential wood burning; (2) local woodburning ordinances and resolutions; (3) Colorado Regulation No. 16 which establishes street sanding and sweeping requirements; (4) the federal tailpipe standards, which provide an ongoing benefit due to fleet turnover, and Colorado Regulations 11, 12, and 13 which were developed by the State and approved by EPA independently from the PM₁₀ SIP but are included because of their particulate emission reduction benefit; (5) Colorado Regulation No. 1, which provides stationary source emission control regulations for particulates, smokes, carbon monoxide and sulfur oxides³; and (6) individual stationary source permit revisions for Public Service Company Cherokee facility, Purina Mills, Electron Corporation, TRIGEN—Colorado Energy

³ Carbon monoxide is not relevant to the PM₁₀ SIP. However, EPA is incorporating by reference Section IX of Regulation No. 1 that relates to CO to accurately reflect the reorganization of the regulation.

Corporation⁴, Rocky Mountain Bottle Company, Conoco Refinery, and Adolph Coors Brewery. The State's submission demonstrates attainment of the PM₁₀ NAAQS by December 31, 1994, with continued maintenance of the standard through December 31, 1997.

A more detailed discussion of the individual source contributions and their associated control measures (including available control technology) can be found in the Technical Support Document accompanying EPA's October 3, 1996 proposed approval of the Denver moderate PM₁₀ nonattainment area SIP (61 FR 51631). As noted elsewhere in this action, EPA received comments on the proposed action to approve the Denver PM₁₀ SIP. EPA believes that the responses set forth in this action adequately address the comments and is proceeding with the approval as proposed.

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 to 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 SIP. Each request for revision to any SIP 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

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 has exempted these regulatory actions from EO 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify

⁴ Permit changes for TRIGEN achieve PM₁₀ SIP precursor emission reductions to accommodate precursor emission increases at the Rocky Mountain Bottle facility (formerly the Coors Glass Plant). While these revisions to the emissions limits are acceptable for meeting RACM/RACT requirements, EPA's action herein regarding these limits does not in any manner relieve these companies of the obligation to comply with any nonattainment NSR permitting requirements that might apply to such changes in emissions limits.

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).

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 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. 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.

VII. 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 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 June 16, 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and record keeping requirements, Sulfur dioxide, and Volatile organic compounds.

Dated: February 28, 1997.

Jack W. McGraw,
Acting 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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(82) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(82) The Governor of Colorado submitted the Denver moderate nonattainment area PM₁₀ State Implementation Plan (SIP) with a letter dated March 30, 1995. The Governor submitted revisions to Regulation No. 13, one of the control measures relied on in the PM₁₀ SIP, on December 22, 1995. These submittals as well as support documentation submittals made

on June 8, 1993, June 10, 1993, June 25, 1993, July 19, 1993, August 5, 1993, September 3, 1993, September 21, 1993, October 20, 1993, December 12, 1993, January 19, 1994, December 23, 1994, March 3, 1995, and November 8, 1995 satisfy those moderate PM₁₀ nonattainment area SIP requirements due for the Denver PM₁₀ nonattainment area on November 15, 1991. EPA is approving the SIP. This approval replaces the previous limited approval at 40 CFR 52.320(c)(61).

(i) Incorporation by reference.

(A) Regulation No. 4, "Regulation on the Sale of New Woodstoves and the Use of Certain Woodburning Appliances During High Pollution Days," 5 CCR 1001-6, as adopted by the Air Quality Control Commission on June 24, 1993, effective August 30, 1993.

(B) Local woodburning ordinances and resolutions.

(1) Arvada, Colorado. Ordinance number 2451, effective November 2, 1987, regarding woodburning restrictions.

(2) Aurora, Colorado. Ordinance numbers 87-118 and 92-14, effective May 22, 1987 and May 22, 1992, respectively, regarding woodburning restrictions.

(3) Boulder, Colorado. Ordinance numbers 5007 and 5445, adopted November 25, 1986 and April 21, 1992, respectively, regarding woodburning restrictions.

(4) Broomfield, Colorado. Ordinance number 794, effective November 24, 1988, regarding woodburning restrictions.

(5) Denver, Colorado. Ordinance numbers 293 and 1018, approved May 30, 1990 and December 16, 1993, respectively, regarding woodburning restrictions.

(6) Douglas County, Colorado. Resolution number 991-128, adopted November 14, 1991, regarding woodburning restrictions.

(7) Englewood, Colorado. Ordinance numbers 31 and 39, passed on July 20, 1992, regarding woodburning restrictions.

(8) Federal Heights, Colorado. Ordinance number 565, adopted January 5, 1988, regarding woodburning restrictions.

(9) Glendale, Colorado. Ordinance numbers 2 and 14, adopted January 5, 1988 and effective on October 20, 1992, respectively, regarding woodburning restrictions.

(10) Greenwood Village, Colorado. Ordinance numbers 17 and 9, effective July 9, 1988 and March 25, 1992, respectively, regarding woodburning restrictions.

(11) Jefferson County, Colorado. Resolution numbers CC89-873 and CC90-617, dated December 29, 1989 and August 7, 1990, respectively, regarding woodburning restrictions.

(12) Lafayette, Colorado. Ordinance number 24; series 1988, effective November 15, 1988, regarding woodburning prohibitions.

(13) Lakewood, Colorado. Ordinance numbers 0-86-113 and 0-92-61, effective December 1, 1986 and November 28, 1992, respectively, regarding woodburning restrictions.

(14) Littleton, Colorado. Ordinance numbers 51 and 26, passed on December 6, 1988 and August 18, 1992, respectively, regarding woodburning restrictions.

(15) Longmont, Colorado. Ordinance number 0-89-1, adopted December 27, 1988, regarding woodburning restrictions.

(16) Mountain View, Colorado. Ordinance number 90-5, approved on January 7, 1991, regarding woodburning restrictions.

(17) Sheridan, Colorado. Ordinance numbers 22 and 1, approved October 25, 1988 and February 9, 1993, respectively, regarding woodburning restrictions.

(18) Thornton, Colorado. Ordinance numbers 2120 and 2194, adopted October 28, 1991 and September 28, 1992, respectively, regarding woodburning restrictions.

(19) Westminster, Colorado. Ordinance numbers 1742 and 2092, enacted on November 9, 1987 and December 28, 1992, respectively, regarding woodburning restrictions.

(C) Regulation No. 16, "Concerning Material Specifications for, Use of, and Clean-up of Street Sanding Material," 5 CCR 1001-18, as adopted by the Air Quality Control Commission on September 22, 1994, effective November 30, 1994.

(D) Regulation No. 1, "Emission Control Regulations for Particulates, Smokes, Carbon Monoxide, and Sulfur Oxides for the State of Colorado," 5 CCR 1001-3, Sections I-IV and VI-IX, and Appendices A and B, as adopted by the Air Quality Control Commission on August 19, 1993, effective October 20, 1993; with revisions to Sections VII and VIII, adopted by the Air Quality Control Commission on September 22, 1994, effective November 30, 1994.

(E) Public Service Company Cherokee facility SO₂ emission limitations for the power facility.

(1) Permit 86AD352(1), effective date November 13, 1986, regulates SO₂ emissions at Unit #1.

(2) Permit 86AD352-2, effective date April 30, 1992, regulates SO₂ emissions at Unit #4.

(F) Purina Mills Inc. total PM₁₀ emissions limitations at the animal feed manufacturing facility.

(1) Permit 93AD1008-1, effective date October 19, 1993, regulating emissions at the finished product loadout facility.

(2) Permit 93AD1008-2, effective date October 19, 1993, regulating emissions at the grain receiving facility.

(G) Electron Corporation total PM₁₀ emission limitations at the gray iron foundry.

(1) Permit 93AR1363-1, effective date January 12, 1994, regulating emissions at the Table shot blaster and associated baghouse.

(2) Permit 93AR1363-2, effective date January 12, 1994, regulating emissions at the five grinding booths-stand and associated baghouse.

(3) Permit 93AR1363-3, effective date January 12, 1994, regulating emissions at the five grinding booths-hand and associated baghouse.

(4) Permit 93AR1363-4, effective date January 12, 1994, regulating emissions at the Muller-25 sand system and associated baghouse.

(5) Permit 93AR1363-5, effective date January 12, 1994, regulating emissions at the Coleman core oven-sand.

(6) Permit 93AR1363-6, effective date January 12, 1994, regulating emissions at the Spinner wheelabrator and associated baghouse.

(7) Permit 93AR1363-7, effective date January 12, 1994, regulating emissions at the Sand sile-core room and associated baghouse.

(8) Permit 93AR1363-8, effective date January 12, 1994, regulating emissions from pouring of molten iron (casting) and castings cooling.

(9) Permit 93AR1363-9 effective date January 12, 1994, regulating emissions at three tumble blast machines and associated baghouse.

(10) Permit 93AR1363-10, effective date January 12, 1994, regulating emissions at two mullers-80A and associated baghouse.

(11) Permit 93AR1363-11, effective date January 12, 1994, regulating emissions at the Casting shakeout hood and associated baghouse.

(12) Permit 93AR1363-12, effective date January 12, 1994, regulating emissions at the Casting-disamatic mold and associated baghouse.

(13) Permit 93AR1363-13, effective date January 12, 1994, regulating emissions at the Sand silo-disamatic and associated baghouse.

(14) Permit 93AR1363-14, effective date January 12, 1994, regulating emissions at the Sand silo-air set room and associated baghouse.

(15) Permit 93AR1363-15, effective date January 12, 1994, regulating

emissions at two electric induction furnaces and associated baghouse.

(16) Permit 93AR1363-16, effective date January 12, 1994, regulating emissions at two Inducto-Therm electric induction furnaces model #2000/4, serial nos. 40102 and 40103, and associated baghouse.

(17) Permit 93AR1363-17, effective date January 12, 1994, regulating emissions from chemicals used in core making process.

(18) Permit 93AR1363-18, effective date January 12, 1994, regulating emissions at the Loop shakeout and associated baghouse.

(19) Permit 93AR1363-19, effective date January 12, 1994, regulating emissions at the Floor shakeout and associated baghouse.

(20) Permit 93AR1363-20, effective date January 12, 1994, regulating emissions at the Reclaim sand and associated baghouse.

(21) Permit 93AR1363-21 effective date January 12, 1994, regulating emissions at the Sand heater/cooler and associated baghouse.

(22) Permit 93AR1363-22, effective date January 12, 1994, regulating emissions at the Paint spray booth.

(H) TRIGEN-Colorado Energy Corporation permit emissions limitations at two boilers.

(1) Permit 10JE660, effective date February 25, 1997, regulating emissions at the #4 boiler: tangential fired cogeneration steam boiler.

(2) Permit 11JE305-1, effective date February 19, 1997, regulating emissions at the #5 boiler: tangential fired cogeneration steam boiler.

(I) Rocky Mountain Bottle Company emission limitations on three furnaces.

(1) Permit 92JE129-1, effective date June 29, 1995, regulating emissions at the KTG glass melting furnaces #1, #2 and #3.

(J) Conoco Refinery allowable emission limitations from the refinery.

(1) Permit 90AD524, effective date March 20, 1991, regulating a Tulsa natural gas fired 20MMbtu/hour heater equipped with low-NO_x burners.

(2) Permit 90AD053, effective date March 20, 1991, regulating process heaters H-10, H-11 and H-27 and process boilers B4, B6, and B8 all burning fuel gas only.

(3) Permit 91AD180-3, effective December 28, 1992, regulating the three stage Claus sulfur recovery unit with tail gas recovery unit.

(ii) Additional material.

(A) Regional Air Quality Council, "Guidelines for Reducing Air Pollution from Street Sanding" sets voluntary guidelines for public works departments to follow to reduce the amount of street

sand applied, and includes recommendations for increasing the effectiveness of street cleaning operations.

3. Section 52.332 is amended by adding paragraph (f) to read as follows:

§ 52.332 Moderate PM₁₀ Nonattainment Area Plans.

* * * * *

(f) On March 30, 1995, and November 17, 1995, the Governor of Colorado submitted the moderate PM₁₀ nonattainment area plan for the Denver area. The March 30, 1995 submittal was made to satisfy those moderate PM₁₀ nonattainment area SIP requirements due for the Denver PM₁₀ nonattainment area on November 15, 1991. The November 17, 1995 submittal was also made to satisfy the PM₁₀ contingency measure requirements which were due for Denver on November 15, 1993.

[FR Doc. 97-9948 Filed 4-16-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 116]

RIN 2127-AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document amends Standard No. 213, "Child Restraint Systems," to modify the air bag warning label which rear-facing child seats are required to bear beginning May 27, 1997. This document responds to a request from Mercedes-Benz, asking that the standard allow for additional wording in the required text of the label. NHTSA by this document makes final on an interim basis the amendment requested by Mercedes, which would clarify the warning and which would not lessen the safety of child restraints. The agency also solicits comments on this amendment. Because this amendment will clarify the required warning label and will relieve a restriction currently imposed by the standard, NHTSA has determined that it is in the public interest to make the changes effective immediately on an interim basis. Assuming that a final rule

is issued, the final rule would respond to any comments and would be effective upon publication in the **Federal Register**.

DATES: Effective April 11, 1997. Comments must be received by June 2, 1997.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FURTHER INFORMATION CONTACT:

For nonlegal issues: Mary Versailles, Office of Safety Performance Standards, NPS-31, telephone (202) 366-2057.

For legal issues: Deirdre Fujita, Office of the Chief Counsel, NCC-20, telephone (202) 366-2992.

Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: This document amends Standard No. 213, "Child Restraint Systems," on an interim basis to modify the air bag warning label which rear-facing child seats are required to bear beginning May 27, 1997. This document also solicits comments on this amendment. The requirement for the label was adopted by a November 27, 1996 final rule (61 FR 60206),¹ which also adopted new warning label requirements for vehicles with air bags. The labels will help reduce the adverse effects of air bags, especially for children, by increasing the number of people who place child restraints in the rear seat instead of the front.

The requirement for the enhanced child seat label is set forth in S5.5.2(k) of Standard 213. The requirement specifies, among other things, the exact content of the message that must be provided by the label. The message of the label must be preceded by a heading ("WARNING"), with an alert symbol, and state the following:

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under. Also required for the label is a pictogram showing a rear-facing child seat being impacted by an air bag, surrounded by a red circle with

a slash across it. Flexibility as to the content of the label is not provided; thus, additional wording is not permitted.

On April 2, 1997, Mercedes asked NHTSA to amend the warning label for child restraints that meet certain criteria. Mercedes has developed a rear-facing child restraint system that has a device that automatically cuts off the passenger-side air bag in vehicles designed to respond to such a device. Mercedes intends to market this child restraint initially to customers purchasing vehicles without rear seats, and that are equipped with the cutoff feature. The cutoff feature makes it possible to safely use a child restraint system on the front seat of these vehicles without subjecting the child to risk of injury from an air bag deployment. While NHTSA recommends that any child be in the rear seat of a vehicle equipped with one, if Mercedes later installs the cutoff feature in vehicles with rear seat, the cutoff feature will avoid the risk of injury from an air bag deployment if a rear-facing child seat is used on the front seat. Mercedes believes that the first statement ("DO NOT place rear-facing child seat on front seat with air bag") is inappropriate for child restraints with a feature to turn off the air bag. It could also be potentially confusing to owners of these vehicles who have such a child restraint, when they have been instructed that the child restraint will automatically deactivate the air bag and thus can be used on the front seat. The amendment requested by Mercedes would amend the sentence stating "DO NOT place rear-facing child seat on front seat with air bag" by adding the phrase "unless air bag is off."

The statements on the air bag warning label were designed to improve the likelihood that people will read the label, understand its message, and place child restraint systems in the rear seat. The required phrase "DO NOT place rear-facing child seat on front seat with air bag" is incomplete and possibly confusing for child restraint systems, such as the Mercedes system, that automatically deactivate the air bag in vehicles, since those child restraints are intended for use on and marketed as appropriate for front seat positions on vehicles equipped with complimentary air bag cutoff devices. Adding the phrase "unless air bag is off" at the end of the statement clarifies the message and tailors it more appropriately for a system such as the one offered by Mercedes. Moreover, NHTSA already permits vehicles that have manual cutoff switches for the passenger-side

¹ Corrected December 4, 1996 (61 FR 64297), December 11, 1996 (61 FR 65187), and January 2, 1997 (62 FR 31).