

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Benjamin Franco, (404) 562-9039.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531. Telephone: (615)-532-0554.

Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902. Telephone: (615) 521-2488.

FOR FURTHER INFORMATION CONTACT: Benjamin Franco at 404/562-9039.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 9, 1997.

Michael V. Payton,

Acting Regional Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0017 and CO-001-0018; FRL-5869-4]

Clean Air Act Approval and Promulgation of the Denver, Colorado Mobile Source Emissions Budgets for PM₁₀ and NO_x

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is requesting additional comments on certain aspects of the State Implementation Plan (SIP) revisions for the Denver PM₁₀ and NO_x mobile source emissions budgets that were submitted by the Governor of Colorado. EPA initially proposed approval of the SIP revisions on October 3, 1996 (61 FR 51631). During that rulemaking's public comment period, EPA received several comments. Due to the complexity of the issues, EPA is asking interested parties to submit additional information on two issues. This information may help EPA make a more informed decision on the appropriateness of approving both the PM₁₀ and NO_x emissions budget SIPs.

DATES: Comments on this request for additional information must be received in writing on or before September 4, 1997.

ADDRESSES: Copies of the State's original PM₁₀ and NO_x emissions budget SIPs, comments received during the public comment period, and other information are available for inspection during normal business hours at the Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Callie Videtich at (303) 312-6434.

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1995, and April 22, 1996, the Colorado Governor submitted revisions to the Denver PM₁₀ SIP which establish mobile source emissions budgets for PM₁₀ and NO_x respectively. 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 both emissions budgets on October 3, 1996 (61 FR 51631) along with the Denver PM₁₀ SIP. Following a 60 day public comment period, EPA finalized approval of the Denver PM₁₀ SIP on April 17, 1997 (62 FR 18716). EPA did not take final action on the emissions budget submittals in order to more thoroughly consider comments received on the proposals during the public comment period.

II. This Action

Based upon a thorough review, EPA has concluded that additional information is needed in order for EPA to make an informed decision about certain aspects of the SIPs based upon public comments responding to our proposed approval of the PM₁₀ and NO_x emissions budgets. EPA is seeking additional information on the two issues outlined below.

1. It appears to EPA that the Colorado legislature, through Senate Bill 95-110 (codified at section 25-7-105(1)(a)(III), C.R.S.), changed the PM₁₀ emissions budgets that the Colorado Air Quality Control Commission (AQCC) had

adopted on February 16, 1995. EPA wishes to take comment on whether the PM₁₀ budgets that were ultimately submitted to EPA for approval were adopted after reasonable notice and public hearing as required by section 110 of the Clean Air Act (CAA). Section 110(a)(2) of the CAA provides that "[e]ach implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing." Robert Yuhnke, on behalf of COPIRG, Colorado Environmental Coalition, Citizens for Balanced Transportation, American Lung Association of Colorado, Environmental Defense Fund, and Ms. Stephanie Mines, and Frank Johnson, on behalf of the Colorado Attorney General's Office, have submitted information that touches on this question. Their letters may be examined at the address listed above. EPA wishes to obtain further comment on this issue. In particular, EPA is concerned that the legislative action did not meet the CAA's requirements for notice and public hearing and that no subsequent public hearing was held before the AQCC. The Colorado Attorney General's Office has suggested that hearings held before the AQCC in September and October 1994, and in February 1995, were adequate to satisfy the CAA's hearing requirement, and that there is no requirement that a hearing be held at every step in the State review process. It has also indicated that the State legislative process is an open and public process and that the legislators are accountable to the electorate.

2. Commentors were concerned that the budgets do not demonstrate attainment considering growth in non-mobile sources, and that the adopted NO_x budget of 119.4 tons per day was not consistent with the NO_x inventory of 102.7 tons per day used in the maintenance demonstration. (In the following discussion, EPA uses the terms "mobile source" and "mobile source emissions" to mean "motor vehicle" and "motor vehicle emissions," consistent with the State's submittal. Neither the State's budget submittal nor EPA's conformity rule regulate emissions from non-road mobile sources.)

The Regional Air Quality Council's (RAQC's) proposal to the AQCC to increase the emissions budget was based on an analysis showing that the Denver modeling region could tolerate mobile source PM₁₀ emissions of 221 tons per day in 2015 before a violation of the PM₁₀ standard would occur. (This analysis was not submitted at the time the budgets were submitted to EPA, but was referenced in

proceedings before the RAQC and the AQCC in 1994 and was provided by the RAQC on April 23, 1997.) By contrast, the attainment and maintenance demonstrations are based on emissions levels of 41 and 44 tons per day, respectively. The RAQC defined the difference between 44 tons per day and 221 tons per day (i.e., 177 tons) as a "safety margin" in emissions and assigned 16 tons of this safety margin to mobile source PM₁₀ (i.e., raised the SIP's budget to 60 tons per day) in order to facilitate future conformity determinations by the Denver Regional Council of Governments (DRCOG). The RAQC and the State justified the increase of the budget from 44 to 60 tons by noting that this increase represented only a small portion of the available safety margin. The RAQC's analysis assumed 2015 emissions levels of all non-mobile sources, and assumed zero NO_x emissions from mobile sources (i.e., that all emissions were direct PM₁₀ emissions).

The RAQC's analysis is strictly a mathematical analysis of the maximum level of emissions that could theoretically be accommodated in each grid in the modeling domain; it is not an analysis of any particular projected growth scenario for Denver. The analysis assumes equal levels of emissions in each grid of the modeling domain, from downtown Denver to rural outlying portions of the domain. Although the safety margin provision in Section 93.132(b) of the conformity rule applies only to existing adopted SIPs which contained a built-in safety margin, section 93.132(a) clearly envisions cases in which a SIP quantifies a safety margin and explicitly assigns some or all of it to the mobile source budget. This general provision applies to situations where a state reanalyzes a SIP to quantify and assign the safety margin.

As noted above, the RAQC's analysis accounts for growth in non-mobile sources of emissions to 2015 levels but does not account for mobile source NO_x (all mobile source emissions are treated as PM₁₀ emissions). To quantify the impact of this omission, EPA reviewed documents related to the attainment demonstration and found that an increase of 10.4 tons per day of NO_x would lead to a 1.0µg/m³ increase in PM₁₀ concentrations (source: July 7, 1994 and February 8, 1995 Kevin Briggs memoranda). Thus, the adopted budget of 119.4 tons per day of NO_x would equate to approximately 22 tons per day of PM₁₀. Subtracting this 22 tons from the RAQC's original 221 ton budget, a 199 ton PM₁₀ budget along with a 119.4 ton NO_x budget would still provide for

attainment of the NAAQS. However, the State has only revised the SIP to establish a 60 ton PM₁₀ budget and a 119.4 ton NO_x budget. Thus, NO_x emissions of 119.4 tons per day can be easily accommodated within the 177 ton PM₁₀ safety margin identified by the RAQC and the State.

The fact that the 119.4 ton per day NO_x budget can be accommodated within the safety margin identified by the RAQC is one reason that EPA is not concerned that this budget is inconsistent with the SIP's 1998 maintenance demonstration budget of 102.7 tons per day. The other reason is the SIP's requirement that each conformity determination must include a modeling analysis demonstrating attainment of the PM₁₀ NAAQS (discussed below). Even though the adopted NO_x budget is higher than the inventory used in the maintenance demonstration, DRCOG's transportation plans and transportation improvement programs (TIPs) must still pass a modeling analysis showing attainment of the NAAQS, incorporating the impacts of the 119.4 ton NO_x budget, or the plans and TIPs cannot be found to conform.

EPA believes that the NAAQS are protected by the SIP's requirement for dispersion modeling each time a conformity analysis is conducted. The SIP requires that DRCOG support each conformity determination with a dispersion modeling analysis that shows that each grid in the modeling domain will be in attainment, considering the emissions expected from implementation of the transportation plan or TIP. If the modeling analysis shows that emissions reductions are needed in any locations in order to provide for attainment of the NAAQS, it is incumbent upon DRCOG to identify and ensure implementation of any measures needed to provide those reductions. Thus, DRCOG must satisfy two types of tests to demonstrate conformity: compliance with the 60 ton PM₁₀ budget and the 119.4 ton NO_x budget, and a dispersion modeling analysis showing no violations.

The commentors quote the preamble to EPA's November 24, 1993 transportation conformity regulation in objecting to the use of dispersion modeling in conformity determinations. EPA believes that the Act precludes the use of dispersion modeling as a substitute for an emissions budget test. However, EPA's conformity rule did not anticipate situations where a state would wish to require a regional dispersion modeling analysis in addition to an emissions budget test. EPA does not believe that such an

application of dispersion modeling is precluded by either the Act or the conformity rule. One commentor suggested that the State adopt subregional emissions budgets in lieu of requiring dispersion modeling; however, as a practical matter, the requirement for dispersion modeling has the same effect as establishing subregional budgets because in either case a certain target level of emissions has to be met in each grid in order for each grid to show attainment.

In fact, the requirement for dispersion modeling in addition to a budget test is arguably more protective of the NAAQS than the budget-only process envisioned by the conformity rule. First, a supplemental requirement for dispersion modeling is certainly more protective than a region-wide budget alone. The commentors argue that subregional budgets for problem grids could be identified. However, establishing fixed subregional budgets through the SIP process would not provide the flexibility to consider future growth patterns. Due to changes in the geographic distribution of growth, NAAQS problems could emerge in areas of the city outside of the area for which subregional budgets had been established, in the geographic area covered only by the region-wide budget. A requirement for dispersion modeling each time a conformity determination is made ensures that these new "hotspots" are identified and addressed. A one-time effort to establish subregional budgets would not.

EPA notes that the SIP does not require growth in non-mobile sources to be considered in conducting dispersion modeling for the purposes of conformity determinations. However, the RAQC factored in the future year contribution of non-mobile source emissions (estimated at 23.8 tons per day in 2015 in the February 8, 1995 Briggs memorandum, or 29 tons per day in the April 23, 1997 RAQC memorandum) in defining the region's 177 ton per day safety margin (and thus, in setting the 60 ton budget). More importantly, this aspect of the conformity modeling methodology (that is, not considering growth in non-mobile sources each time a conformity determination is made) is consistent with the way conformity is applied in the other nonattainment areas throughout the country which rely solely on their SIP emission budgets. Growth in non-mobile sources must be considered when budgets are set through the SIP process; however, there is no requirement for future conformity determinations to continually re-evaluate the adequacy of these budgets given growth in non-mobile sources.

In summary, EPA believes that the fact that only a small portion of the SIP's safety margin has been allocated to the mobile source emissions budget, along with the requirement for dispersion modeling each time a conformity determination is conducted, are adequate to ensure that the NAAQS are protected by the emissions budgets adopted by the State and submitted to EPA. EPA is requesting further comment in support of or opposed to this rationale for approving the budget submittals.

III. Proposed Action

EPA is seeking additional information from interested parties on two issues related to the Denver PM₁₀ and NO_x mobile source emissions budget SIPs. EPA initially proposed approval of the SIP revisions on October 3, 1996 (61 FR 51631).

As indicated elsewhere in this document, EPA will consider any comments received by September 4, 1997 relating to the two issues described above relating to the two SIPs.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

VI. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: July 14, 1997.

Jack W. McGraw,

Acting Regional Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50625A; FRL-5734-1]

Proposed Revocation of Significant New Use Rules For Certain Acrylate Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed significant new use rule (SNUR) for

certain acrylate esters. As initially published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL-5595-1), the comments were to be received on or before July 2, 1997. One commenter requested additional time to research and submit more detailed comments concerning these proposed revocations. EPA is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

DATES: Written comments must be submitted to EPA by August 14, 1997.

ADDRESSES: Each comment must bear the appropriate docket control number OPPTS-50625, etc. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G-099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS-50625, etc.). No confidential business information (CBI) should be submitted through e-mail. Electronic comment on this notice may be filed online at many Federal Depository Libraries.

All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing CBI must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460; telephone: (202) 260-3949; TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This extension of the comment period will allow interested parties who intend to comment on the proposed rule additional time to consider their response.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.