Dated: September 10, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.361 is amended by revising the introductory text and paragraph (b)(1)(i) to read as follows:

§ 51.361 Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use an existing alternative if it demonstrates that the alternative has been more effective than registration denial. An enforcement mechanism may be considered an ''existing alternative'' only in states that, for some area in the state, had an I/M program with that mechanism in operation prior to passage of the 1990 Amendments to the Act. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. Two other types of enforcement programs may qualify for enhanced I/M programs if demonstrated to have been more effective than enforcement of the registration requirement in the past: Sticker-based enforcement programs and computer-matching programs. States that did not adopt an I/M program for any area of the state before November 15, 1990, may not use an enforcement alternative in connection with an enhanced I/M program required to be adopted after that date.

* * * * *

(b) * * *

(1) * * *

(i) For enhanced I/M programs, the area in question shall have had an operating I/M program using the alternative mechanism prior to enactment of the Clean Air Act Amendments of 1990. While modifications to improve compliance may be made to the program that was in effect at the time of enactment, the expected change in effectiveness cannot be considered in determining acceptability;

* * * * *

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BILLING CODE 6560–50–M

40 CFR Part 52

[CO–001–0001a; FRL–5606–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Denver Nonattainment Area PM_{10} Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the state implementation plan (SIP) revision submitted by the State of Colorado on November 17, 1995, to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Denver moderate PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment area. EPA is approving this SIP revision because it is consistent with the PM_{10} contingency measure requirements of the Clean Air Act, as amended (Act).

DATES: This action is effective on December 23, 1996 unless adverse comments are received by November 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to Richard R. Long, Director Air Program, EPA Region VIII, at the address listed below. 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 80202–2466; and Colorado Department of Public Health and Environment Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, 8P2–A, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6434.

SUPPLEMENTARY INFORMATION:

I. Background of Denver PM_{10} SIP

The Denver, Colorado area was designated nonattainment for PM_{10} 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. See 56 FR 56694 (November 6, 1991); 40 CFR 81.306 (specifying designations for Colorado).

Those States containing initial moderate PM_{10} nonattainment areas were required to submit several provisions by November 15, 1991. These provisions, including an attainment demonstration (or demonstration that timely attainment is impracticable), are described in EPA's proposed rulemaking for the Denver moderate PM_{10} nonattainment area SIP (see 58 FR 66326, December 20, 1993). The Denver PM_{10} control measures targeted re-entrained road dust, residential wood burning, stationary sources and mobile sources for reductions in PM_{10} emissions to demonstrate attainment of the PM_{10} NAAQS. See the December 20, 1993, notice of proposed rulemaking and associated Technical Support Document (TSD) for further details.

Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). The Governor of Colorado initially submitted a contingency measure SIP for Denver on December 9, 1993. On March 30, 1994, the EPA notified the State that it had determined that the wintertime secondary particulate concentration contained in the June 7, 1993, Denver PM_{10} SIP submittal was underestimated by 5.4 $\mu g/m^3$. Based upon that finding, the contingency measures contained in the December 9, 1993, submittal were used to provide further emission reductions for a revised attainment demonstration addressing the additional secondary impacts. The State then undertook a process to develop new contingency measures. The Governor submitted the new measures on November 17, 1995, for the Denver nonattainment area.

II. This Action

A. Analysis Requirements for State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA [see Section 110(a)(2) and 110(l) of the Act]. EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) of the Act, 57 FR 13565, and EPA's completeness criteria for SIP submittals in 40 CFR part 51, appendix V].

To entertain public comment, the State of Colorado's Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing on March 16, 1995, to consider the Denver PM_{10} contingency measures.

Following the hearing, the AQCC adopted revisions to Colorado Regulation No. 16 as the Denver PM_{10} contingency measures. The Contingency Measure SIP revision was formally submitted to EPA by the Governor for approval on November 17, 1995.

The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated March 14, 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. PM_{10} Contingency Measures

The Clean Air Act requires that States containing PM_{10} nonattainment areas adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make RFP or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator established a schedule providing that states containing initial moderate PM_{10} nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543.)

The General Preamble further explains that contingency measures for PM_{10} should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see sections 172(c)(1) and 189(a)(1)(C) of the Act). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP/ provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511).

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State or the [EPA] Administrator.'' EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures can be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The Denver PM_{10} Contingency Measure SIP contains the following control measure—Improved Street Sweeping Technology. The control measure is found in Colorado Regulation No. 16, Street Sanding Emissions and provides that beginning November 1 of the first winter season after the determination and notification that the Denver PM_{10} nonattainment area has failed to attain the PM_{10} NAAQS or to make RFP, the contingency measure will be implemented.

Below is a detailed description of the contingency measure adopted for the Denver moderate PM_{10} nonattainment area:

a. *Improved Street Sweeping Technology Contingency Measure.* The Denver PM_{10} Contingency Measure SIP requires that any entity responsible for applying street sanding material within the Denver Central Business District (CBD), defined as the area bounded by Colfax Avenue, Speer Boulevard, Wynkoop Street, 20th Street and Broadway, shall clean all streets in the CBD using vacuum sweepers or a more effective technology within four days of each sanding episode, or as soon as weather permits. The requirements are found in revisions to Regulation No. 16, Street Sanding Emissions.

3. Effectiveness of the Contingency Measure

Information provided in the SIP submittal indicates that implementation of the contingency measure would result in an additional 15 $\mu g/m^3$ reduction of PM_{10} at the highest receptor in downtown Denver. This reduction equates to an additional 50% reduction in emissions over that demonstrated for the controls in the Denver moderate area SIP demonstration. This reduction exceeds the 25% emissions reduction which EPA expects from contingency measures as discussed in the General Preamble.

EPA believes this contingency measure is approvable. The control measures implemented in the PM_{10} SIP are projected to achieve more emissions reductions than needed to demonstrate attainment of the PM_{10} NAAQS, as indicated by the State's predicted 24-hour attainment concentration of 147.8 $\mu g/m^3$. Furthermore, the predicted 24-hour ambient concentration resulting if the contingency measure is implemented is 132.8 $\mu g/m^3$. Since the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, this established safety margin further supports the reasonableness of this contingency measure.

4. Early Implementation

Section IV. B. of Colorado Regulation No. 16 sets out its early implementation policy as follows: Those parties subject to the contingency measure requirements could implement the measures at any time prior to EPA's determination that the area failed to attain the PM_{10} NAAQS or make RFP. Early implementation of these measures will not result in the requirement to implement additional contingency measures if the area eventually is determined to fail to attain the NAAQS or make RFP. If Denver were reclassified to a serious nonattainment area, additional control measures, including best available control measures and ''serious area'' contingency measures, would be necessary.

5. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see section 110(a)(2)(C)].

EPA's review of the November 17, 1995, PM_{10} Contingency Measure Plan has revealed that the State has adequate authority to enforce state air regulations against local entities, and enforce local air pollution requirements when local entities fail to do so. In addition, the State has authority to implement and enforce all emissions limitations and control measures adopted by the AQCC. In summary, EPA believes that Colorado has adequate enforcement capabilities to ensure compliance with the Denver contingency measure SIP. For further information, see the TSD prepared for this document.

III. Final Action

EPA is approving the PM_{10} contingency measure plan submitted for

the Denver moderate PM_{10} nonattainment area by the Governor of Colorado on November 17, 1995. This submittal adequately addresses the PM_{10} contingency measure requirements for Denver.

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 revisions should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective December 23, 1996 unless, by November 22, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice 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 December 23, 1996.

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.

IV. Executive Order

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.

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.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air 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).

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 promulgated 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 approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 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).

VIII. Petition 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 November 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 27, 1996.

Patricia D. Hull,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(74) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(74) The Governor of Colorado submitted PM_{10} contingency measures for Denver, Colorado in a letter dated November 17, 1995.

(i) Incorporation by reference.

(A) Section IV. of Regulation No. 16, Street Sanding Emissions, adopted March 16, 1995, effective May 30, 1995.

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