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).

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 February 23, 1998. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 1997.

Jeanne M. Fox,

Regional Administrator, Region II.

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 et seq.

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(93) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(93) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from petroleum and volatile organic compound storage and transfer, surface coating and graphic arts sources, dated March 8, 1993 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Amendments to Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200 ''General Provisions,'' Part 201 ''Permits and Certificates,'' Part 228 ''Surface Coating Processes,'' and Part 229 ''Petroleum and Volatile Organic Liquid Storage and Transfer,'' Part 233 ''Pharmaceutical and Cosmetic Manufacturing Processes,'' and Part 234 ''Graphic Arts,'' effective April 4, 1993.

3. Section 52.1679 is amended by revising the six entries for Parts 200, 201, 228, 229, 233 and 234 to the table in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 200, General Provisions.	4/4/93	December 23, 1997, FR 67006.	Redesignation of nonattainment areas to attainment areas (200.1(mm)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.
Part 201, Permits and Certificates.	4/4/93	December 23, 1997, FR 67006.	
*	*	*	* * *
Part 228, Surface Coating Processes:			
228.1–228.10	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 228.3(e)(1) are effective only if approved by EPA.
Part 229, Petroleum and Volatile Organic Liquid Storage and Transfer.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA.
*	*	*	* * *
Part 233, Pharmaceutical and Cosmetic Processes.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA.
Part 234, Graphic Arts	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 234.3(f)(1) are effective only if approved by EPA.

[FR Doc. 97–33317 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–44–1–6866(a); FRL–5630–1]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS). The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This action is effective on February 23, 1998 unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Jeff Houk at the Region VIII address. 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, Third Floor, South Terrace, Denver, Colorado 80202–2405; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, State Program Support Unit, EPA Region VIII, telephone (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The Colorado Springs and Fort Collins, Colorado areas were designated nonattainment for CO and classified as moderate under Sections 107(d)(4)(A) and 186(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.306 (Colorado Springs Area and Fort Collins Area). The air quality planning requirements for moderate CO nonattainment areas are set out in Subparts 1 and 3 of Part D, 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 CO 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.

Moderate CO areas with a design value of less than or equal to 12.7 parts per million (including Colorado Springs and Fort Collins) are not required by the Act to submit a SIP demonstrating attainment of the NAAQS. Rather, these areas are required to submit certain SIP elements, including an oxygenated fuels program, an emissions inventory, and contingency measures.

Those States containing moderate CO nonattainment areas such as Colorado Springs and Fort Collins were required to submit contingency measures by November 15, 1993 (see 57 FR 13532). These measures must become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the CO National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline (December 31, 1995). See Section 172(c)(9) and 57 FR 13532–13533.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Colorado submitted revisions to the SIP for Colorado Springs and Fort Collins with a letter dated February 18, 1994. The revisions address contingency measures for CO. EPA is now approving the Colorado Springs and Fort Collins contingency measures as adopted by the State of Colorado on November 12, 1993 and submitted to EPA by Colorado's Governor on February 18, 1994.

A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

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

To entertain public comment, the State of Colorado, after providing adequate notice, held a public hearing on November 12, 1993 to address the Colorado Springs and Fort Collins contingency measures. Following the public hearing, the Colorado Springs and Fort Collins contingency measures were adopted by the State.

The contingency measures were submitted as a proposed revision to the SIP by the Governor with a letter dated February 18, 1994. The submittal was received on February 22, 1994, and was deemed complete by operation of law on August 22, 1994.

B. Contingency Measures

The Clean Air Act requires States containing certain CO nonattainment areas to 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 reasonable further progress or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13532–13533. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing moderate CO nonattainment areas with a design value of less than or equal to 12.7 parts per million (ppm) shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13532.) ("Not Classified" areas, that is, areas that had a design value less than the 9.0 ppm CO NAAQS at the time of designation, are not required to submit contingency measures.)

EPA guidance ("Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plans," EPA–452/R–92–003, July 1992) recommends that implementation of the contingency measures provide vehicle miles travelled (VMT) reductions or emission reductions sufficient to counteract the effect of one year's growth in VMT. However, the Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. EPA believes that contingency measures must provide for continued progress toward the attainment goal. This would be the minimum requirement and is consistent with the statutory scheme.

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

[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. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 3 contains provisions specifically applicable to CO nonattainment areas. At times, Subpart 1 and Subpart 3 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's document and supporting information.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

the General Preamble at 57 FR 13533) 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 affect full implementation of CO contingency measures to occur within 12 months 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 could 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 CO contingency measures for Colorado Springs and Fort Collins were developed by the Air Pollution Control Division (APCD) of the Colorado Department of Health (CDH), now the Colorado Department of Public Health and Environment (CDPHE). After a public hearing on November 12, 1993, the Colorado Air Quality Control Commission (AQCC) adopted the measures. The Governor submitted the contingency measures to EPA with a letter dated February 18, 1994.

Within 12 months of notification by EPA that either the Colorado Springs or Fort Collins CO nonattainment area has failed to attain the CO NAAQS by December 31, 1995, the APCD will implement the contingency measure, the Enhanced Vehicle Inspection and Maintenance (I/M) Program, codified in Colorado Regulation No. 11. The enhanced I/M program produces substantial additional emission reductions over the ''Basic'' I/M program currently in operation in the Colorado Springs and Fort Collins areas. The enhanced I/M program is currently in operation in the Denver/Boulder and Longmont CO nonattainment areas. EPA conditionally approved the Colorado Enhanced I/M program in the **Federal Register** on November 8, 1994 (59 FR 55584).

The program would apply in those portions of El Paso County (Colorado Springs) and Larimar County (Fort Collins) in which the Basic I/M program is currently in operation. These areas, known as the ''AIR Program Area'' within each County, are described in the authorizing legislation for the enhanced I/M program.

C. Effectiveness of the Contingency Measures

In Colorado Springs, emissions from one year's growth in VMT were estimated by the Pikes Peak Area Council of Governments (the Metropolitan Planning Organization for the area) at 14.4 tons per day. Reductions from the enhanced I/M program were estimated at approximately 34 tons per day. EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Colorado Springs.

In Fort Collins, APCD estimates that mobile source emissions would be lowered by 13.95% with the implementation of the enhanced I/M program. Since the estimated one year growth of VMT is 3% in Fort Collins, and the CO emissions inventory for this area reports that approximately 80% of the CO emissions in the nonattainment area are attributable to mobile sources, the reductions from the enhanced I/M program provide more than a sufficient amount of reduction as a contingency measure. Therefore, EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Fort Collins.

D. 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)].

The specific measures contained in the Colorado Springs and Fort Collins contingency plan are addressed above in Section II.B. Regulation No. 11, which implements this contingency measure, is legally enforceable by APCD. There are civil penalties, which increase with each violation, for noncompliance with the regulation, as well as a prohibition on the registration of any vehicle which has not complied with the enhanced I/M program and substantial penalties for nonregistration of vehicles. The enforceability of Regulation No. 11 is addressed in more detail in EPA's November 8, 1994 **Federal Register** document conditionally approving the program. The State of Colorado has a program that will ensure that the contingency measures are adequately enforced. EPA believes that the State's existing air enforcement program will be adequate.

III. Final Action

EPA is approving Colorado's SIP revisions, submitted by the Governor with a letter dated February 18, 1994, for the Colorado Springs and Fort Collins, Colorado nonattainment areas. This submittal addressed CO contingency measure plans that were due on November 15, 1993. These plans involve the implementation of the Colorado Enhanced Vehicle I/M Program in the Colorado Springs and Fort Collins CO nonattainment areas in the event that EPA makes a determination that either area has failed to attain the CO NAAQS by the statutory attainment date of December 31, 1995. A copy of the State's SIP revision is available at the address listed in the ADDRESSES section above.

The EPA is publishing the action on the contingency measure submittal without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the contingency measure SIP revision should adverse or critical comments be filed. Thus, under the procedures established in the May 10, 1994 **Federal Register**, today's direct final action will be effective February 23, 1998 unless, by January 22, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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 February 23, 1998.

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

Nothing in this action should be construed as permitting, 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. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that this proposed 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 the 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).

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated today 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. 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, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor vehicle pollution, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: September 28, 1995.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Editorial note: This document was received at the Office of the Federal Register December 17, 1997.

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 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(71) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(71) The Governor of Colorado submitted carbon monoxide contingency measures for Colorado Springs and Fort Collins with a letter dated February 18, 1994. This submittal was intended to satisfy the requirements of section 172(c)(9) of the Clean Air Act for contingency measures which were due on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Areas regulation, 5 CCR 1001–20, Section VI, City of Fort Collins Nonattainment Area, and Section VII, Colorado Springs Nonattainment Area, adopted on November 12, 1993, effective on December 30, 1993.

* * * * *

[FR Doc. 97–33320 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–5939–8]

RIN 2060–AF71

Withdrawal of Direct Final Rule for Ambient Air Quality Surveillance for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for Ambient Air Quality Surveillance for Lead. EPA published the direct final rule on November 5, 1997 at 62 FR 59813. As stated in that **Federal Register** document, if adverse or critical comments were received by December 5, 1997, the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse