indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (54 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entitles. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–21861 Filed 8–27–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO35–1–6190, CO41–1–6826, CO40–1–6701, CO42–1–6836; FRL–5559–8]

Clean Air Act Approval and Promulgation of State Implementation Plans; Colorado; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State implementation plan (SIP) revisions submitted by the Governor of Colorado on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. These submittals revised Colorado Regulation No. 3 and the Common Provisions Regulation pertaining to the State's new source review (NSR) permitting requirements. The submittals included revisions to make the State's NSR rules more compatible with its title V operating permit program, the addition of nonattainment NSR provisions for new and modified major sources of PM–10 precursors locating in the Denver PM–10 nonattainment area, a change from the dual ''source'' definition to the plantwide definition of ''source'' in the State's nonattainment NSR permitting requirements, and correction of deficiencies in the State's construction permitting rules. EPA is proposing to approve these regulatory revisions because they provide for consistency with the Clean Air Act (Act), as amended, and the corresponding Federal regulations and guidance.

DATES: Comments must be received in writing on or before October 28, 1996.

ADDRESSES: Written comments should be addressed to: Vicki Stamper, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the State's submittals and other information relevant to this proposed action are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION: Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

I. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. [See sections 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 and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V.

To entertain public comment, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held public hearings on (1) August 20, 1992 regarding changes to the definition of ''source'' in the Common Provisions Regulation and Regulation No. 3; (2) July 15, 1993 regarding revisions to make the State's title V and NSR programs more compatible and on the complete restructuring of Regulation No. 3; (3) February 17, 1994 regarding PM–10 precursor NSR provisions for the Denver moderate PM–10 nonattainment area; (4) August 18, 1994 regarding revisions to Regulation No. 3 addressing title V/SIP deficiencies; and (5) March 16, 1995 regarding revisions to address other deficiencies in Regulation No. 3. Following the public hearings, the AQCC adopted the respective rule revisions. The Governor of Colorado

submitted the various rule revisions with letters dated November 17, 1994, November 12, 1993, August 25, 1994, September 29, 1994, and January 29, 1996, respectively.

The SIP revisions were reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated January 19, 1995, January 28, 1994, October 20, 1994, November 25, 1994, and July 12, 1996, respectively, were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken.

II. This Action

EPA evaluated the State's submittals by comparing them to the requirements of the amended Act, the Federal construction permitting requirements in 40 CFR 51.160–166, the Federal operating permit requirements in 40 CFR part 70 (for those provisions which the State added to the construction permit program in order to implement specific provisions of its operating permit program), and EPA guidance and policy.

A. November 12, 1993, September 29, 1994, and January 29, 1996 SIP Submittals

In July of 1993, the Colorado AQCC adopted operating permit regulations as part of Regulation No. 3 in accordance with title V of the amended Act and the corresponding Federal regulations for operating permit programs in 40 CFR part 70. Concurrent with adoption of its operating permit regulations, the State also adopted revisions to its construction permit regulations in Regulation No. 3 in order to make the two permit programs work together and in order to allow for implementation of certain title V provisions. The State completely revised and restructured Regulation No. 3, so that it is now divided into four parts, as follows:

1. Part A contains all definitions and provisions that apply to both the construction permit and operating permit programs. In this part, Colorado extended the administrative permit amendment provisions and some of the operational flexibility provisions of 40 CFR part 70 to the construction permit program;

2. Part B contains provisions which apply only to the construction permit program [including the nonattainment NSR and prevention of significant deterioration (PSD) programs]. The State made revisions to allow certain aspects of the operating permit program to also apply to construction permits (e.g., combined permits and general permits) and to allow certain operational flexibility provisions to be implemented through the operating permit program without requiring construction permits (e.g., minor modifications, SIP equivalency, and other permit changes);

3. Part C contains provisions which apply solely to the State's operating permit program; and

4. Part D contains the Statements of Basis and Purpose for each revision to Regulation No. 3.

Parts A and C of Regulation No. 3 were submitted for approval as part of the State's title V operating permit program on November 5, 1993. Parts A and B of Regulation No. 3 were submitted for approval in the SIP on November 12, 1993.

EPA reviewed Parts A and B of Regulation No. 3 for conformance with the applicable Federal requirements and identified several deficiencies in the November 1993 SIP submittal. EPA informed the State of those deficiencies in a letter dated September 19, 1994. In that letter, EPA identified deficiencies that needed to be addressed by the State before EPA would proceed to act on the November 1993 SIP submittal. EPA also recommended other revisions to provide for clarity in the State's permitting regulations.

Some of the deficiencies identified by EPA in the State's November 12, 1993 SIP submittal were also identified as deficiencies in the State's title V operating permit program which EPA required the State to address before EPA would proceed with interim approval of the State's title V program. Those deficiencies included (1) The fact that the State does not currently have a SIP-approved generic emissions trading program under which the trading described in Section IV.B. of Part A of Regulation No. 3 would be allowed, and (2) the allowing of alternative emission limits to be developed in permits when Section IV.D.1.i. of Part B of Regulation No. 3 did not adequately provide for this flexibility. The State adopted revisions intended to address these deficiencies (as well as to address other deficiencies in its title V operating permit program) on August 18, 1994 and submitted these revisions for approval in the SIP and for revision to its title V program on September 29, 1994.

EPA's review of the September 29, 1994 submittal found that the State adequately addressed these SIP/title V deficiencies by clarifying that Section IV.B. of Part A could only be implemented if the SIP included an EPA-approved trading program and by deleting Section IV.D.1.i. of Part B. Based on this September 29, 1994 title V program revision (which also included correction of other title V program deficiencies), EPA granted interim approval of Colorado's operating permit program on January 24, 1995 (60 FR 4563).

On March 16, 1995, the AQCC adopted further revisions to Regulation No. 3 intended to address the remaining deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Those revisions were submitted to EPA for approval on January 29, 1996 and include the following:

1. Changes to the definitions of ''lowest achievable emission rate (LAER)'' and ''net emissions increase'' to be consistent with the Federal definitions in 40 CFR 51.165(a)(1)(xiii) and 40 CFR 51.165(a)(1)(vi), respectively;

2. Consolidation of the State's definitions of ''air pollution source,'' ''stationary source,'' and ''new source'' so that only the term ''stationary source,'' which is consistent with the Federal definition, is used in the provisions of Regulation No. 3. The State also retained the definition of ''air pollution source'' because it reflects the definition found in State statute, but it is no longer used in Regulation No. 3;

3. The addition of a requirement to the definition of ''volatile organic compound (VOC)'' requiring EPA approval prior to use of any test method that is not an EPA reference test method;

4. Revisions to the administrative process in Section II.D.5. of Part A of Regulation No. 3 which allows for processing individual requests to exempt additional sources from the State's Air Pollution Emission Notice (APEN) requirements (and, consequently, from construction permit requirements) to require EPA approval of any new exemptions prior to use;

5. Revisions to the definition of ''surplus'' in Section V.C.10. of Part A of Regulation No. 3 to be consistent with EPA's Emission Trading Policy Statement (see 51 FR 43832, 12/4/86);

6. The addition of a provision to Section V.E. of Part A of Regulation No. 3 to ensure that new source growth cannot interfere with reasonable further progress towards attainment, in order to be consistent with section 173(a)(1)(A) of the Act;

7. The addition of a reference to the State's definition of ''net emission increase'' in Section V.I. of Part A of Regulation No. 3 (which discusses netting);

8. The addition of a requirement to Section IV.C.1. of Part B of Regulation No. 3 requiring the opportunity for public comment on permits for sources

trying to obtain Federally enforceable limits on their potential to emit; and

9. The deletion of an exemption from nonattainment NSR requirements for sources undergoing fuel switches due to lack of adequate fuel supply (which is not allowed by EPA). EPA believes these regulatory revisions adequately address the deficiencies described above.

The State addressed some of EPA's other comments with an opinion from the State Attorney General's office dated July 3, 1995. Those comments and the State's responses are as follows:

1. EPA recommended adding definitions to Regulation No. 3 of ''begin actual construction,'' ''necessary preconstruction approvals or permits,'' and ''construction'' to be consistent with the Federal definitions. The State did not add these definitions because the State contends that its definitions of ''commenced construction,'' ''construction'' in the Common Provisions Regulation, and ''modification'' made the addition of these definitions unnecessary. After further review of the definitions referred to by the State, EPA agrees with the State's contention; and

2. Section IV.A. of Part A of Regulation No. 3 allows for alternative operating scenarios to be included in a construction permit, and this provision is based on the title V provision in 40 CFR 70.6(a)(9). However, in order to approve this provision for construction permits, EPA wanted assurances from the State that it would require compliance with all PSD or nonattainment NSR provisions (e.g., ambient air quality analysis or net air quality benefit) for every scenario allowed under the permit. The State's July 3, 1995 letter included an interpretation that compliance with all PSD or nonattainment NSR requirements (whichever was applicable) would be ensured under the provision in Section IV.A.2. of Regulation No. 3, which requires that the permit contain conditions to ensure each scenario meets all applicable Federal and State requirements. This satisfies EPA's concern.

EPA believes the comments discussed above were adequately addressed by the State in its revisions to Regulation No. 3 adopted on March 16, 1995 and its opinion from the State Attorney General's office. In addition, the State also addressed many of EPA's recommended revisions to Regulation No. 3, which EPA believes will help to strengthen the State's construction permit regulations.

EPA had also commented on Section IV.C. of Part A of Regulation No. 3, which provides for a construction permit (as well as a title V operating permit) to contain terms and conditions allowing for the trading of emissions decreases and increases under a permit cap, as long as certain conditions are met. This provision is based on the title V operating permit requirement in 40 CFR 70.4(b)(12)(iii), but EPA had concerns with the use of this provision in construction permitting. EPA is currently working on revisions to the Federal NSR regulations as part of the ''NSR Reform'' rules that would allow a source to establish a cap in its construction permit (termed a plantwide applicability limit or PAL) for NSR applicability under which emissions trading might be allowed. EPA proposed these NSR Reform rules for public comment on July 23, 1996 (see 61 FR 38250). Until the final EPA regulations are promulgated on this issue, EPA does not believe it is appropriate to approve the State's provision allowing trading under permit caps for construction permits, as EPA could be approving a rule that is inconsistent with the forthcoming Federal regulations. However, as discussed in the preamble to the July 23, 1996 rulemaking, Colorado may be able to consider the issuance of permits with emissions caps on a case by case basis under EPA's existing regulations (see 61 FR 38264).

EPA believes the State, in the submittals of September 29, 1994 and January 29, 1996, has adequately addressed all of the deficiencies EPA identified in the State's November 12, 1993 SIP submittal. Thus, these three submittals are approvable. However, as discussed above, EPA is not acting on Section IV.C. of Part A of Regulation No. 3 at this time. For further details, see the Technical Support Document (TSD) accompanying this notice.

B. August 25, 1994 SIP Submittal of Nonattainment NSR Rules for New and Modified Sources of PM–10 Precursors

1. Background of Submittal

When the Act was amended in 1990, it included, among other things, revised requirements for nonattainment areas which are set out in part D of title I of the Act. It also set out specific deadlines for submittals of SIP revisions addressing these new requirements, including the submittal of nonattainment NSR rules for which the deadlines varied depending on the type and designation of the nonattainment area. In response to those requirements, the Governor of Colorado submitted a SIP revision on January 14, 1993 to bring the State's nonattainment NSR rules up to date with the requirements of the amended Act. EPA acted on that submittal on August 18, 1994 (59 FR 42500). Specifically, EPA approved the State's nonattainment NSR rules as meeting the requirements of the amended Act for the State's ozone and carbon monoxide areas, as well as the Canon City, Pagosa Springs, and Lamar PM–10 nonattainment areas. However, EPA only partially approved the State's NSR submittal in that action for the Aspen, Telluride, and Denver moderate PM–10 nonattainment areas because the State had not submitted NSR regulations for new and modified major sources of PM–10 precursors [as is required by section 189(e) of the amended Act for those PM–10 nonattainment areas where such sources contribute significantly to PM–10 national ambient air quality standard (NAAQS) exceedances] and because, at the time of publication of the August 18, 1994 Federal Register notice, EPA had not promulgated findings that such sources of PM–10 precursors did not contribute significantly to exceedances of the PM–10 NAAQS in any of these three areas.[1] (See 59 FR 42503–42504 for further details.)

Since that August 18, 1994 Federal Register action, EPA has promulgated findings that sources of PM–10 precursors do not contribute significantly to PM–10 NAAQS exceedances in the Aspen and Telluride PM–10 nonattainment areas (see 59 FR 47092–47093, September 14, 1994, and 59 FR 47809, September 19, 1994, respectively), resulting in the State's NSR provisions being considered fully approved for these two PM–10 nonattainment areas. However, in the Denver moderate PM–10 nonattainment area, EPA has indicated that it does consider major stationary sources of PM–10 precursors (specifically oxides of nitrogen (NO_x) and sulfur dioxide (SO_2)) to contribute significantly to exceedances of the PM–10 NAAQS (see 58 FR 66331, December 20, 1993).

On February 17, 1994, the State adopted nonattainment NSR provisions for new and modified major sources of PM–10 precursors (specifically, SO_2 and NO_x) in the Denver metro PM–10 nonattainment area. These Regulation No. 3 revisions were formally submitted to EPA for approval into the SIP on August 25, 1994.

[1] Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. Any such determination that sources of PM10 precursors do not contribute significantly is generally made concurrently with EPA's promulgation of an action on a SIP submittal for a PM_{10} nonattainment area.

2. Evaluation of Submittal

To meet the requirements of section 189(e) of the Act, States must submit rules applying all of the nonattainment NSR provisions normally applicable to sources of PM–10 to sources of PM–10 precursors, including the 100 ton per year threshold for defining major stationary sources and the current significance level thresholds in 40 CFR 51.165(a)(1)(x) for each PM–10 precursor pollutant for defining major modifications. To address these requirements, the State made the following changes to Regulation No. 3:

(a) In the definition of ''major stationary source'' in Section I.B.58. of Part A of Regulation No. 3, the State added provisions clarifying that, in the Denver metro PM–10 nonattainment area, any source that is major for SO_2 or NO_x (which are considered precursors to PM–10 in the Denver area) will be considered major for PM–10 and will be subject to the nonattainment NSR requirements.

(b) In the definition of ''major modification'' in Section I.B.35.B. of Part A of Regulation No. 3, the State adopted a provision stating that, in the Denver metro PM–10 nonattainment area, any net emissions increase that is significant for SO_2 or NO_x shall be considered significant for PM–10. The significance levels for these two PM–10 precursor pollutants in Section I.B.57. of Part A of Regulation No. 3 are set at 40 tons per year each, which is consistent with the significance levels in 40 CFR 51.165(a)(1)(x).

(c) In Section V.F.1. of Part A of Regulation No. 3 which identifies the criteria for approval of all emissions trading transactions including NSR offsets, the State added provisions explaining which interpollutant trades between PM–10 and PM–10 precursors are allowed for NSR offsets. Specifically, Section V.F.1. provides that new or modified major sources of a PM–10 precursor can obtain offsets from reductions in that same precursor or in PM–10, while new or modified major sources of PM–10 can only obtain offsets from reductions in PM–10. This is consistent with EPA's current policy regarding offsets for PM–10.

However, the State did adopt an exception to this requirement in Section V.H.9. of Part A of Regulation No. 3. Specifically, Section V.H.9. allows interpollutant offsets other than those discussed in Section V.F.1. to be approved on a case-by-case basis, provided that the applicant demonstrates, on the basis of EPA-approved methods where possible, that the emissions increases for the new or modified source will not cause or contribute to a violation of the NAAQS. Section V.H.9. further provides that the source's permit application will not be approved by the State until written approval has been received from the EPA. Because written approval will be required from EPA before a permit will be issued which allows an interpollutant trade for offsetting (other than those trades allowed in Section V.F.1.), EPA believes that it will be able to ensure any interpollutant offsets will meet the requirements of the Act concerning NSR. Thus, this exception is acceptable to EPA.

The State's nonattainment NSR provisions are generally found in Section IV.D.2. of Part B of Regulation No. 3. As discussed in EPA's August 18, 1994 approval mentioned above, the State's nonattainment NSR provisions, which apply in all of the State's nonattainment areas, meet all of the general NSR requirements required by the Act and Federal regulations (see 59 FR 42500–42506). Thus, since the State's revised nonattainment NSR rules now subject new and modified major stationary sources of PM–10 precursors (as well as PM–10) locating in the Denver moderate PM–10 nonattainment area to the nonattainment NSR requirements as required by section 189(e) of the Act, and since the State's nonattainment NSR provisions meet all of the applicable Federal requirements, EPA considers Colorado's nonattainment NSR rules for the Denver moderate PM–10 nonattainment area to be fully approvable.

C. November 17, 1994 SIP Submittal Revising the Definition of ''Source''

1. Background of Submittal

On August 7, 1980, EPA promulgated rules for review of new major sources and major modifications in nonattainment areas (45 FR 52676). Those rules defined ''source'' as either an entire plant or an individual piece of process equipment within the plant. This definition precluded major sources undergoing a modification at an individual piece of process equipment from considering other emission decreases within the plant in determining the net emissions increase of the modification. However, in the Federal PSD permitting regulations (which apply to major sources and major modifications located in attainment or unclassifiable areas), a plantwide definition of source was used, under which only significant net emissions increases at the entire plant were subject to permitting requirements. Thus, under the dual source definition, a greater number of modifications at a source would be subject to NSR permitting requirements than under the plantwide definition of source used in the PSD regulations. EPA adopted this more stringent definition of source for nonattainment area NSR permitting to aid in the cleanup of the air in nonattainment areas.

However, on October 14, 1981, EPA deleted the dual source definition from the nonattainment NSR permitting requirements and replaced it with the plantwide definition to give States the option of adopting the plantwide definition of source in nonattainment areas (see 46 FR 50766). In the October 1981 Federal Register notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). EPA reasoned that, since part D of the Act requires States to adopt adequate SIPs which demonstrate attainment and maintenance of the NAAQS, ''deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with part D'' (46 FR 50767). EPA also added that, by bringing more plant modifications into the NSR permitting process, the dual source definition may discourage replacement of older, dirtier processes and, hence, retard not only economic growth but also progress toward clean air. Last, EPA pointed out that, under the plantwide definition, new equipment would still be subject to any applicable new source performance standard (NSPS). Thus, EPA regarded changing to the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans and, at best, the potential for air quality improvements driven by the marketplace. In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of part D of the Act and, hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

Consequently, on August 20, 1992, the Colorado AQCC adopted revisions to the Common Provisions Regulation and Regulation No. 3 to change from the dual definition of ''source'' to the plantwide ''source'' definition in its nonattainment NSR permitting requirements. Specifically, the State revised the definitions of ''stationary source'' and ''net emissions increase'' in the Common Provisions Regulation to delete references to the dual source definition. In addition, the State deleted Section V.I.4. of Colorado Regulation No. 3, which explained that the dual source definition applied in nonattainment NSR permitting. These

revisions were subsequently submitted by the Governor to EPA for approval into the SIP on November 17, 1994.

The State adopted these revisions prior to the July 1993 State adoption of a completely restructured Regulation No. 3, which was discussed in Section II.A. above. Before the July 1993 State action, the State's definitions for its construction permit program were generally found in the Common Provisions Regulation and all of its construction permit requirements were in Regulation No. 3.

(Note: at that time, Regulation No. 3 was not divided into Parts A, B, C, or D).

Under the new structure of Regulation No. 3, the definitions of ''stationary source'' and ''net emissions increase'' are in Sections I.B.58. and I.B.36., respectively, in Part A of Regulation No. 3, and the deletion of Section V.I.4. is reflected in Part B of revised Regulation No. 3. These definitions of ''stationary source'' and ''net emissions increase'' (as well as other definitions pertaining to the State's construction permit program) are also still in the Common Provisions Regulation.

2. Evaluation of Submittal

In the October 14, 1981 Federal Register discussed above in which EPA deleted the dual source definition from the Federal nonattainment NSR permitting requirements, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual source or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (see 46 FR 50767 and 50769).

This 1981 ruling allowing States to adopt a plantwide definition assumed that nonattainment areas already had, or shortly would have, approved part D plans in place. However, the Act was amended in 1990, creating new requirements and deadlines for submittal of attainment plans for areas which were not in attainment of the NAAQS. In light of these changes, EPA will now approve adoption of the plantwide definition into SIPs for nonattainment areas that need but lack adequate part D attainment plans approved by EPA only if the State has demonstrated that it is making, and will continue to make, reasonable efforts to adopt and submit complete plans for timely attainment in these areas.

For the majority of Colorado's nonattainment areas that are required to have part D attainment plans, the State has EPA-approved part D plans. The only areas for which the State does not yet have fully approved part D attainment plans are the Denver PM–10, Denver carbon monoxide (CO), Longmont CO, Telluride PM–10, and Steamboat Springs PM–10 nonattainment areas. The State has submitted part D plans for the Denver PM–10 and CO nonattainment areas, the Longmont CO nonattainment area, and the Steamboat Springs PM–10 nonattainment area, but EPA has not yet completed action on these submittals. For the Telluride PM–10 nonattainment area, EPA has approved the State's attainment demonstration (see 59 FR 47808, September 19, 1994), but the plan has not been fully approved because it lacked quantitative milestones to provide for maintenance of the PM–10 NAAQS through December 31, 1997 (see 59 FR 47809). The State has subsequently submitted additional controls to provide for maintenance of the PM–10 NAAQS in the Telluride PM–10 nonattainment area through 1997, but EPA has not yet completed action on that submittal. Thus, EPA believes the State has adequately demonstrated that it has made, and will continue to make, reasonable efforts to get an approved part D attainment plan in place for these areas.

Further, the State has certified that it did not, and will not, rely on any emissions reductions from the operation of the NSR program using the dual source definition in any of its nonattainment area demonstrations of attainment. EPA's examination of the State's attainment demonstrations confirmed the State's certification. Therefore, EPA believes it is appropriate to approve Colorado's switch to a plantwide definition of source in accordance with EPA's 1981 action, inasmuch as the State has demonstrated that it is making, and will continue to make, reasonable efforts to get approved part D attainment plans in place for all of its nonattainment areas.

III. Proposed Action

EPA is proposing to approve all of the revisions to Colorado's construction permitting program in Regulation No. 3 submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. EPA is also proposing to approve the revisions to the Common Provisions Regulation submitted on November 17, 1994. However, for the reasons discussed above, EPA is taking no action, at this time, on Section IV.C. of Part A of Regulation No. 3.

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. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule

that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 14, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–21910 Filed 8–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 180 & 185

[OPP–300360B; FRL–5394–6]

RIN 2070–AB78

Pesticides; Extension of Time for Filing Objections and Requests for Hearing for Food Additive Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension.

SUMMARY: EPA is extending by 30 days the time period for filing objections, requests for hearings and requests for stays pertaining to a final rule revoking the food additive tolerances for certain uses of acephate, iprodione, imazalil and triadimefon. EPA is also extending the effective date of the revocation by 30 days. EPA is taking this action under the provisions of the Food, Drug and Cosmetic Act, as modified by the recently enacted Food Quality Protection Act.

DATES: The effective date of September 27, 1996 of the final rule published at 61 FR 39528, July 29, 1996 is extended to October 28, 1996. The date for objections, requests for hearings, or stays is extended from August 28, 1996 to September 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1113, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5944. e-mail: frane.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 29, 1996 (61 FR 39528)(FRL–5388–2), EPA issued an order revoking six food additive tolerances for four pesticides. EPA revoked four tolerances based on the determination that the tolerances were inconsistent with the Delaney clause in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA), and two tolerances because they are not needed to prevent the adulteration of food. In the final rule, EPA set an effective date of September 27, 1996 for the revocations. Any person adversely affected by the July 29, 1996 Order was allowed 30 days to: (1) file written objections to the order, (2) file a written request for an evidentiary hearing on the objections, and (3) file a petition for a stay of the effective date. Under the original date, objections and requests for hearing were to be filed by August 28, 1996.

Subsequently, on August 3, 1996, the President signed the Food Quality Protection Act of 1996 (FQPA) (Pub.L. 104–170). Among other things, this new law revised the procedures for objecting to Agency decisions on tolerance regulations. FFDCA 408(g)(2)(A) now provides 60 days instead of 30 days for the filing of objections and requests for hearings. These provisions were effective immediately upon enactment.

EPA has received requests from Valent U.S.A., Bayer Corporation and Whitmire MicroGen, requesting that, in light of other provisions of the new FQPA, EPA should extend the time for filing objections and hearing requests, or should withdraw the revocations altogether. The requesters suggest that the Agency's basis for revocations under the Delaney clause of section 409 of the FFDCA has been nullified by the enactment of the FQPA, which takes pesticide tolerances out from under the provisions of section 409 entirely. EPA believes there is merit in this argument and is currently developing an appropriate regulatory order. Given that this order is not yet complete, however, EPA believes it is reasonable to extend the time for filing objections and requests for hearing in accordance with the new timeframes in section 408(g). EPA is taking this action in its discretion and upon its own initiative.

Accordingly, by this document, EPA is extending the date by which objections and requests for hearings and stays can be filed, and also extending the effective date of the final rule revoking the food additive tolerances for certain uses of acephate, iprodione, imazalil and triadimefon, published at 61 FR 39528, July 29, 1996.

Dated: August 22, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 96–21821 Filed 8–27–96; 8:45 am]

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40 CFR Part 300

[FRL–5554–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Commencement Bay Nearshore/Tideflats Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete portions of the Commencement Bay Nearshore/ Tideflats (CB/NT) Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This proposal for partial deletion pertains only to portions of Operable Unit (OU) 1—CB/NT Sediments, and Operable Unit (OU) 5—CB/NT Sources. Specifically, it pertains to the sediments contained in and upland properties draining only to the St. Paul or Blair Waterways, and to four properties which were transferred to the Puyallup Tribe of Indians under the Puyallup Land Settlement Act of 1989 (''Puyallup Land Settlement Properties''). The four Puyallup Land Settlement Properties proposed for deletion are the: Taylor