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).

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.

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.

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 May 20, 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 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).)

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental Protection, Administrative practice and procedure, Air pollution control for hydrocarbons, Incorporation by Reference, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 28, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(73) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(73) On January 14, 1994 and on June 24, 1994, Roy Romer, the Governor of Colorado, submitted SIP revisions to the State Implementation Plan for the Control of Air Pollution. This revisions requires the implementation of a basic motor vehicle inspection and maintenance program in the urbanized areas of El Paso (Colorado Springs), Larimer (Fort Collins), and Weld (Greeley) Counties meeting the requirements of the Clean Air Act Amendments of 1990. This material is being incorporated by reference for the enforcement of Colorado's basic I/M program only.

(i) Incorporation by reference.

(A) Colo. Rev. Stat. §§ 42–4–306.5—42–4–316 adopted June 8, 1993 as House Bill 93–1340, effective July 1, 1993.

(B) Regulation No. 11 (Inspection/Maintenance Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on March 17, 1994, effective April 30, 1994.

[FR Doc. 96–6005 Filed 3–18–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT7–1–5487a; MT26–2–6874a; FRL–5438–9]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the state implementation plan (SIP) for the Kalispell, Montana nonattainment area, the Flathead County Air Pollution Program, and a Board Order setting emission limits at nine Kalispell area stationary sources, submitted with letters dated November 25, 1991, January 11, 1994, August 26, 1994 and July 18, 1995, to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM_{10} SIP for Kalispell. In addition, EPA also approves the SIP revisions submitted by the State of Montana on August 26, 1994, and July 18, 1995, to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Kalispell and Columbia Falls moderate PM_{10} nonattainment areas. The Columbia Falls submittal also incorporates minor revisions to the attainment and maintenance demonstrations for the Columbia Falls moderate PM_{10} nonattainment area SIP into the Montana SIP. Since the SIP still adequately demonstrates timely attainment and maintenance of the PM_{10} standard, EPA approves these revisions.

EPA is also deleting an obsolete section of the Code of Federal Regulations (CFR) which applied to further requirements for the Butte total suspended particulates (TSP) plan.

DATES: This action is effective on May 20, 1996 unless adverse comments are received by April 18, 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 Montana Department of Health and Environmental Sciences, Air Quality Bureau, 826 Front Street, Helena, Montana 59620–0901. 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, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

The Kalispell and Columbia Falls, Montana areas were designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.327 (specifying designation for Flathead County). The air quality planning requirements for moderate PM^{10} nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] (EPA took action on the Columbia Falls PM_{10} SIP on April 14, 1994 (see 59 FR 17700)).

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 PM_{10} 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 final action and the supporting rationale. In this rulemaking action on the Montana moderate PM_{10} SIP, EPA is applying its interpretations considering the specific factual issues presented.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

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

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

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

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992, [see section 189(a)]. States containing initial moderate PM_{10} nonattainment areas were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). 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 PM_{10} National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline. The contingency measures for Kalispell and Columbia Falls, which are described in Section II.2.A and II.2.B of this document, were submitted to fulfill this requirement. See Section 172(c)(9) and 57 FR 13510–13512 and 13543–13544.

II. This Action

EPA is taking five actions with this document. 1) Approval of the Kalispell PM_{10} nonattainment area control plan including the Flathead County Air Pollution Control Program. (EPA earlier took action on certain portions of the Program with the approval of the Columbia Falls PM_{10} SIP on April 14, 1994 (see 59 FR 17700). In this action, EPA is approving the Program as re-submitted by the Governor on August 26, 1994 with further modifications submitted on July 18, 1995). 2) Approval of the Kalispell PM_{10} Contingency Measure Plan. 3) Approval of the Columbia Falls PM_{10} Contingency Measure Plan. 4) Deletion of an obsolete section of the Code of Federal Regulations (CFR) which applied to further requirements for the Butte total suspended particulates (TSP) plan. 5) Approval of Montana's New Source Review rules for Kalispell since precursors are determined to not contribute significantly. Below is a description of each of these actions.

1. *Kalispell PM_{10}* SIP. EPA is approving the Kalispell PM_{10} nonattainment area control plan and rules of the Flathead County Air Pollution Control Plan found in the Flathead County Air Pollution Control Program originally submitted by the Governor on November 25, 1991, with revisions submitted on January 11, 1994, August 26, 1994 and July 18, 1995. Flathead County contains two PM_{10} nonattainment areas for which SIPs were due in November 1991: Columbia Falls and Kalispell. The Flathead County Air Pollution Control Program regulations apply to both areas and were submitted with the attainment demonstration for Kalispell on November 25, 1991. EPA initially took final approval action on all aspects of the Flathead County Air Pollution Control Program, except rules 501 through 506, with the Columbia Falls SIP on April 14, 1994 (see 59 FR 17700). The August 26, 1994, submittal contained minor modifications to the Flathead county Air Pollution Control Program regulations that had been adopted through Board Order on May 20, 1994. Thus, EPA is taking action on the entire Flathead County Air Pollution Control Program submitted on August 26, 1994, in order to assure that the most recent version of the rules is approved into the SIP. The July 18, 1995 submittal contained revised control effectiveness calculations.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is granting approval of those elements of the Kalispell PM_{10} plan that were due on November 15, 1991, and submitted by the State on November 25, 1991, January 11, 1994, August 26, 1994, and July 18, 1995. EPA believes that the Kalispell plan meets the applicable requirements of the Act.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 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 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

A. Analysis of State Submission

1. Procedural Background. 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. The 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 on the PM_{10} implementation plan for Kalispell, the State of Montana held a public hearing on November 15, 1991. The State supplied evidence that adequate public notice for these hearings was provided. Following the public hearings, the Board of Health and Environmental Sciences adopted the Flathead County Air Pollution Control Program and the Kalispell PM_{10} Control Plan. The submittal for the Flathead County Air Pollution Control Program and Kalispell PM_{10} SIP were signed by the Governor on November 25, 1991. The final plan was received by EPA on December 4, 1991, as a proposed revision to the SIP.

The SIP revision and subsequent submittals from the Governor were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The November 25, 1991 submittal was found to be complete and a letter, dated April 29, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. The January 11, 1994 submittal was found complete by default on July 11, 1994. The August 26, 1994 submittal was found complete and a letter was forwarded to the Governor of that finding on November 1, 1994. The July 18, 1995, submittal was found complete in a letter forwarded to the Governor on July 18, 1995.

2. Accurate Emission Inventory. Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emission inventories must be received with the submission (see 57 FR 13539).

Kalispell's base year emission inventory was developed for September 1, 1986, through August 31, 1987. The results were segregated into seasonal emissions (winter, spring, summer, fall.) Area sources comprise over 90% of the PM_{10} emissions on an annual basis. Annually, paved road dust accounts for 80.16% of the PM_{10} emissions, with unpaved road dust responsible for 7.45%. Industrial sources and residential woodburning account for 5.54% and 4.69% of the total emissions respectively. Re-entrained road dust is the primary source of emissions in all four seasons.

EPA is approving the emission inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[4] For further details see the Kalispell PM_{10} SIP TSD for this action.

3. RACM (Including RACT). As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993, (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Kalispell. In the following table, an outline is presented on these sources, their control measures and associated emissions reduction credit, and effective dates.

Source	Control	PM_{10} emissions reduction	Effective[5]
Re-entrained road dust	Flathead County Rules:		
	501 Sanding & chip sealing standards and 505 Street Sweeping and Flushing.	62% (credit taken only for winter & spring.	5/20/94
	502 Construction and Demolition Activity	(no credit taken)	5/20/94
	503 Pavement of Roads Required	(no credit taken)	5/20/94
	504 Pavement of Parking Lots Required	(no credit taken)	5/20/94
	506 Clearing of land greater than 1/4 acre in size (requires measures to control dust when clearing areas larger than 1/4 acre).	(no credit taken)	5/20/94
Prescribed burning	Flathead County Rules:		
	201 (Open Burning) Definitions	(no credit taken)	5/20/94
	202 Materials Prohibited	(no credit taken)	5/20/94
	203 Minor Open Burning Source Requirements	(no credit taken)	5/20/94
	204 Major Open Burning Source Requirements	(no credit taken)	5/20/94
	205 Special Open Burning Periods	(no credit taken)	5/20/94
	206 Fire Fighter Training	(no credit taken)	5/20/94
	207 Conditional Air Quality Open Burning Permits	(no credit taken)	5/20/94
	208 Emergency Open Burning Permits	(no credit taken)	5/20/94
	209 Permit Fees	(no credit taken)	5/20/94

[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).

[4] EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline.* The guidance provided in this document appears to be consistent with the revised Act.

Source	Control	PM_{10} emissions reduction	Effective [5]
Residential wood combustion	Flathead County Air Pollution Control Program, CHAPTER VIII, Sub-chapter 3, Voluntary Solid Fuel Burning Device Curtailment Program and Sub-chapter 4, Prohibited Materials for Wood or Coal Residential Stoves	(no credit taken)	5/20/94
Industry	Board Order, limiting allowable emissions, based upon signed stipulations between the following sources and the State: A–1 Paving; Equity Supply Company; Flathead Road Dept. (two stipulations issued); Klingler Lumber Co.; McElroy and Wilkins; Montana Mokko; Pack and Company, Inc.; Pack Concrete; and Plum Creek Inc. (Evergreen)..	(no credit taken)	9/17/93
Motor vehicle exhaust	Federal tailpipe standards	(no credit taken)	Ongoing due to fleet turnover.

[5] Note that the effective date of most of the following regulations is past the RACM/RACT implementation date of December 10, 1993. The majority of these regulations were effective in 1991. However, as indicated elsewhere in this action, minor revisions were made to some of the regulations. The table lists the most recent effective date of these regulations.

A more detailed discussion of the source/source category contributions and their associated control measures (including available control technology) can be found in the Kalispell PM_{10} SIP TSD for this action. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan resulted in the attainment of the PM_{10} NAAQS by December 31, 1994. By this action EPA is approving the Kalispell PM_{10} plan's RACM (including RACT) in its entirety.

4. Attainment and Maintenance Demonstrations. As noted, the initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or the State must show that attainment by December 31, 1994, is impracticable (see section 189(a)(1)(B) of the Act). The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.)

The Kalispell attainment and maintenance demonstrations are based upon both CMB analysis with rollback for area sources and dispersion modeling for stationary sources. The 1991 SIP submittal contained an attainment and maintenance demonstration based upon CMB. However, at the time of the CMB study, stationary sources were operating far below their allowable emission rates, and meteorological (wind) conditions did not allow for a reliable analysis of potential stationary source impacts. To supplement the receptor modeling-based analysis, the State agreed to evaluate industrial sources at their allowable emission rates using dispersion modeling.

The industrial sources are removed, for the most part, from the downtown area and are not believed to impact the monitors used for the CMB analyses. Significant concentrations from industrial sources are expected to occur only in the immediate area around the industrial sources because of low stacks and fugitive type emissions. The intent of the dispersion modeling was to see if violations of the standard would occur in the immediate vicinity of the industrial sources. Therefore, the Kalispell attainment and maintenance demonstrations are based upon both CMB analysis for area sources and dispersion modeling for industrial sources.

CMB: The attainment and maintenance demonstrations using CMB analysis for Kalispell indicate that the 24-hour PM_{10} NAAQS would be attained by December 31, 1994, at 137.2 $\mu g/m^3$, and it would be maintained in future years. The demonstration indicated that an annual concentration of 47.9 $\mu g/m^3$ would be achieved by 1995, [6] showing attainment of the annual PM_{10} NAAQS. The annual NAAQS was also demonstrated to be maintained in future years. In the July 18, 1995 submittal, the Governor provided a revised 24-hour attainment demonstration which used a revised background concentration number and higher credits for the re-entrained road dust program based upon the expanded Kalispell Air Pollution Control District boundaries outlined in the August 26, 1994 submittal. Through the implementation of the controls in the expanded area, the attainment analysis indicated that the 24-hour value attained in the year 1995 would be 124.3 $\mu g/m^3$ instead of the 137.2 $\mu g/m^3$ calculated in the November 25, 1991 submittal.

As mentioned above, a maintenance demonstration was contained in the November 25, 1991, submittal which showed maintenance of the 24-hour standard through 1997. The July 18, 1995, submittal did not contain a revised maintenance demonstration. However, based upon the revised attainment year value of 124.3 $\mu g/m^3$ and the projected 2.1% annual population growth rate, EPA has calculated the maintenance demonstration to be 132.3 $\mu g/m^3$ in 1998. Monitored values reported through 1994 have shown attainment. EPA accepts this analysis for demonstrating attainment and maintenance of the 24-hour standard.

The July 18, 1995, submittal did not revise the attainment and maintenance calculations for the annual PM_{10} standard which were contained in the original November 25, 1991, submittal. However, EPA expects that since the July 1995 revised 24-hour values are significantly lower than 1991 values, the annual values would show similar reductions and that attainment and maintenance of the annual PM_{10} standard would result. Monitored annual values reported through 1994 have shown attainment. EPA accepts this analysis for demonstrating attainment of the annual standard.

Dispersion Modeling: As pointed out earlier, because of its concern that the majority of the stationary sources within

[6] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State has demonstrated attainment in the Kalispell nonattainment area.

the Kalispell area were operating far below their allowable permit limits during the CMB study and thus their potential impact on air quality was not being properly calculated, EPA asked the State to perform dispersion modeling to demonstrate attainment and maintenance of the PM_{10} standard. The Montana Department of Health and Environmental Services (MDHES) conducted dispersion modeling using stationary source allowable emission rates to determine if violations of the PM_{10} NAAQS would result in future years. Based upon the results of the dispersion modeling, several stationary source permits were revised to reduce allowable emission rates.

Dispersion modeling, using stationary source allowable emission rates, was used to determine maximum concentrations related to stationary source emissions. The results were used to demonstrate attainment of the standard by December 31, 1994. The 24-hour PM_{10} NAAQS allows one expected exceedance of the standard per year. Thus, in modeling five years of data, attainment is demonstrated when the sixth highest predicted concentration is less than 150 $\mu g/m^3$. The 6th highest modeled concentration in the 1998 maintenance run was 139 $\mu g/m^3$. Total concentrations would be lower in 1995 owing to lower emissions from nearby background sources. This shows attainment of the 24-hour standard of 150 $\mu g/m^3$. In addition, the Kalispell dispersion modeling results indicated attainment of the annual PM_{10} standard. The predicted concentration in the maintenance year (1998) is 50.0 $\mu g/m^3$. Because emissions from nearby background sources would be lower in 1995 than in 1998, predicted 1995 concentrations would be less than 50 $\mu g/m^3$.

5. PM_{10} Precursors. The control requirements that are applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, unless EPA determines such sources do not contribute significantly to PM_{10} levels over the NAAQS in that area (see section 189(e) of the Act). An analysis of air quality and emissions data for the Kalispell nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate emissions from re-entrained road dust, with a small contribution from stationary sources and residential wood burning. The emission inventory for Kalispell revealed that industrial processes contributed 5.54% to the annual PM_{10} emissions. However, the inventory did not differentiate between PM_{10} or precursor emissions. Based upon the types of sources in the area, EPA believes that the overall contribution of PM_{10} precursors is insignificant. Therefore, EPA is making the determination that PM_{10} precursors do not contribute significantly to PM_{10} levels that exceed the standard in Kalispell. The consequences of this determination is to exclude these sources from the applicability of PM_{10} nonattainment area control requirements.

On July 18, 1995, EPA partially approved the State's nonattainment new source review (NSR) permitting regulations for the Kalispell moderate PM_{10} nonattainment area because the State did not submit NSR permitting regulations for sources of PM_{10} precursors in Kalispell and because EPA had not yet found that such sources did not contribute significantly to PM_{10} exceedances in Kalispell (see 60 FR 36715–36722). The consequence of this determination that PM_{10} precursors are insignificant is to exclude major stationary sources of PM_{10} precursors in Kalispell from the applicability of PM_{10} nonattainment area control requirements, including nonattainment NSR permitting. Thus, based on this determination, the State's nonattainment NSR regulations for Kalispell are considered fully approved.

Further discussion of the analyses and supporting rationale for EPA's finding are contained in the TSD accompanying this action. Note that while EPA is making a general finding for this area, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress. The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994, (see section 189(c) of the Act). The State of Montana's PM_{10} SIP indicates that the MDHES and the Flathead County Health Department (FCHD) will submit to EPA a reasonable further progress/milestone report consistent with federal guidelines by December 31, 1994.[7]

In addition, FCHD will prepare less detailed annual progress reports for the prior year by August 1st each year. These annual progress reports shall provide information on the effectiveness of the control strategies.

To monitor the progress of the road dust control rules, a report will be completed on the type and amount of de-icing and sanding material applied, the number of applications of de-icing and sanding materials, the dates of application of each material, and where and when the street sweeping and flushing occurred during the winter season. The sanding material test results for the percent silt and durability also will be submitted.

All exceedances of the PM_{10} standard will be evaluated and a determination made as to the source of the exceedance. Changes in the air quality program to prevent further exceedances and a timetable for implementation will be developed. Any other EPA requirements for RFP reports will be incorporated as necessary.

7. Contingency Measures. See Section II.2. below for requirements.

8. Enforceability Issues. All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act 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). Nonattainment area 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) of the Act).

The specific control measures contained in the SIP are addressed above in Section 3, ''RACM (including RACT).'' The Flathead County Air Pollution Control regulations, as included in the SIP, are legally enforceable by FCHD. Any person who violates any provision or rule, with the exception of the voluntary solid-fuel burning device rule, or order under this program shall be subject to a civil penalty not to exceed $500.00.

The Flathead County Air Pollution Control Program and the associated

[7] Technically the first milestone would fall on November 15, 1994—three years after the deadline for submittal of this SIP. However, the de minimis timing differential between the first milestone submittal date and the attainment date (December 31, 1994) make it administratively impracticable to require separate submittals. *See generally* 57 FR 13539. Using December 31, 1994 as the first milestone, EPA has identified March 31, 1995 as the actual deadline for the submittal of the milestone report (per section 189(c)(2) of the Act). The State of Montana submitted the milestone report on April 12, 1995.

local regulations are also enforceable by the MDHES, if the FCHD fails to administer the program. Since the program has been approved by the Montana Board of Health and Environmental Sciences (MBHES) in accordance with section 75–2–301 of the Montana Code Annotated and effectuated by a MBHES Order, and since the MDHES can enforce MBHES Orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, sections 75–2–401 through 75–2–429, Montana Code Annotated.

The allowable emission limits for the stationary sources being regulated under this plan are enforceable by the MDHES through the issuance of a Board Order. MDHES and the Kalispell sources agreed to emission limitations in stipulations which were enforceable upon approval and adoption by the MBHES through the issuance of a Board Order on September 17, 1993. The stipulations contained emission limitations for the following nine sources: A–1 Paving; Equity Supply Company; Flathead Road Dept. (two stipulations issued); Klingler Lumber Co.; McElroy and Wilkins; Montana Mokko; Pack and Company, Inc.; Pack Concrete; and Plum Creek Inc. (Evergreen).

If a State relies on a local government for the implementation of any plan provision, then, according to section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation when, for example, the State has the authority and resources to implement the provision, and the local entity has failed to do so.

The Flathead County Air Pollution Control Program was established in accordance with the requirements of section 75–2–301 of the Montana Code Annotated, as amended (1991). On November 15, 1991, the MBHES issued a Board Order approving the local program and regulations. A stipulation between the MDHES and the Flathead County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed November 15, 1991. The regulations, Board Order, and stipulation were submitted to EPA as a revision to the Montana SIP.

The State also submitted a state Attorney General's opinion interpreting the authority of the MDHES to enforce any state and local air quality provisions if a local air quality program fails to do so. In practice, the MBHES issues a Board Order when it approves a local program or amendments to a program. Since the Montana Clean Air Act authorizes the MDHES to enforce Board Orders issued by the MBHES, the MDHES has the authority to assume jurisdiction over, and implement, a local program so approved. However, the Montana Clean Air Act also requires a hearing before the MBHES before such an assumption of jurisdiction and authority can be taken.

The Flathead County rules are in effect now, as is the Board Order for the nine stationary sources. The State of Montana has a program that will ensure that the measures contained in the Kalispell PM_{10} SIP are adequately enforced. EPA believes that the State's and Kalispell's existing air enforcement program will be adequate. The TSD for the Kalispell PM_{10} plan contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

2. *Contingency Measures.* The Clean Air Act requires states containing PM_{10} 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 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has 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, n. 3.)

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 Clean Air Act sections 172(c)(1) and 189(a)(1)(C)). 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 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.

A. Kalispell PM_{10} Contingency Measures

The State failed to submit the contingency measures by the November 15, 1993, due date. On January 19, 1994, EPA made a finding that the State failed to submit the contingency measures. Based upon that finding, the 18 month sanctions and 24 month FIP clocks were activated. In response to this finding, the Governor of Montana submitted revisions to the SIP for Kalispell with letters dated August 26, 1994, and July 18, 1995. The revisions address contingency measures for the Kalispell moderate PM_{10} nonattainment area SIP.

1. Procedural Background (see Section II.1.A.1). The PM_{10} contingency measures for Kalispell were developed by the FCHD and the MDHES. On October 18, 1993, after a local public hearing on October 4, 1993, the Kalispell City Council adopted the measures. On October 12, 1993, the Flathead County Commissioners held a public hearing and adopted the contingency measures (Resolution 867A). This county resolution also had included expanding the Columbia Falls area of sanding and sweeping. Subsequent to further discussion, the County Commissioners held another public hearing on April 4, 1994, at which time they removed mention of this expanded area (Resolution 867B). After the May 20, 1994, MBHES public hearing, the Board adopted the local rules which constitute the contingency measures. The Governor submitted the contingency measure rule 507 to EPA with a letter dated August 26, 1994. However, that submittal did not contain the necessary technical analysis and related information.

On July 10, 1995, the Montana Department of Environmental Quality

(MDEQ, formerly MDHES) held a properly noticed public hearing for the purpose of adopting the local rules and technical analysis information into the Montana SIP. The Governor subsequently submitted the outstanding portions of the Kalispell PM_{10} contingency measure SIP revision to EPA with a letter dated July 18, 1995. After reviewing the submittal for conformance with the completeness criteria in 40 CFR 51, Appendix V, EPA determined the submittal to be administratively and technically complete and notified the Governor of such determination in a letter dated July 18, 1995.

2. Contingency Measures. The PM_{10} contingency measure plan for Kalispell was submitted by the Governor to EPA with letters dated August 26, 1994, and July 18, 1995. The contingency measure requires mandatory use of liquid de-icer instead of sand, except under special circumstances.

a. Re-entrained Road Dust Contingency Measure. On April 4, 1994, the Flathead County Board of County Commissioners passed Resolution No. 867B which amended the Flathead County Air Pollution Control Program. The amendments include Rule 507 which is a contingency plan that implements the mandatory use of liquid de-icer on all roads, with the exception of priority routes with extraordinary circumstances, within the Kalispell Air Pollution Control District. Rule 507 provides that within 60 days of notification by EPA that the SIP for the Kalispell moderate PM_{10} nonattainment area failed to timely attain the PM_{10} NAAQS or make reasonable further progress the following will occur:

Within the Kalispell Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary circumstances, priority routes must use sanding material which has a durability (as defined by the Montana Modified L.A. Abrasion test) of less than or equal to seven or other testing method which the Control Board deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than three percent oven dry weight.

b. Effectiveness of the Contingency Measure. If the re-entrained road dust contingency measure is implemented, the control efficiency of the re-entrained road dust measures will be 81% in the 24-hour attainment demonstration. This calculation takes into account the use of liquid de-icer, the current requirements for use of washed sand, and the existing street sweeping measures (see the TSD for the Kalispell PM_{10} SIP for further details on the existing re-entrained road dust strategies). Total reduction from the contingency measure is calculated to be 10632 more pounds of PM_{10} reduced per day than without the contingency measure.

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 124.3 $\mu g/m^3$. Furthermore, the predicted 24-hour ambient concentration resulting if the contingency measure is implemented is 94.0 $\mu g/m^3$. 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.

3. Enforceability Issues. The Flathead County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A stipulation between the MDHES, the Flathead County Commission, and the Kalispell and Columbia Falls City Councils was signed on November 15, 1991, to delineate responsibilities and authorities between the MDHES and the local authorities. On November 15, 1991, the MBHES issued a Board Order effectuating the program. On May 20, 1994, the MBHES issued a Board Order approving the Kalispell PM_{10} contingency measures. The related regulation, and the May 20, 1994, Board Order were submitted to EPA in the August 26, 1994, submittal as a revision to the Montana SIP. The Flathead County regulation is in effect now. The State of Montana has a program that will ensure that the contingency measures contained in the Kalispell PM_{10} SIP are adequately enforced. EPA believes that the State's and Kalispells' existing air enforcement program will be adequate. The Kalispell Contingency Measure SIP TSD contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

B. Columbia Falls PM_{10} Contingency Measures, Control Strategy and Attainment Demonstration Revisions

The State failed to submit the contingency measures by the November 15, 1993, due date. On January 19, 1994, EPA made a finding that the State failed to submit the contingency measures. Based upon that finding, the 18 month sanctions and 24 month FIP clocks were activated. In response to this finding, the Governor of Montana submitted revisions to the SIP for Columbia Falls with a letters dated August 26, 1994. The revision addressed contingency measures for the Columbia Falls moderate PM_{10} nonattainment area SIP.

1. Procedural Background (see Section II.1.A.1)

The PM_{10} contingency measures for Columbia Falls were developed by the FCHD and the Montana (MDHES). After a local public hearing on October 4, 1993, the Columbia Falls' City Council adopted the measures. On October 12, 1993, the Flathead County Commissioners held a public hearing and adopted the contingency measures (Resolution 867A). This county resolution also had included expanding the Columbia Falls area of sanding and sweeping. Subsequent to further discussion, the County Commissioners held another public hearing on April 4, 1994, at which time they removed mention of this expanded area (Resolution 867B). After the May 20, 1994, MBHES public hearing, the Board adopted the local rules which constitute the contingency measures and minor revisions to the attainment and maintenance demonstration for the SIP. The Governor submitted the contingency measure rule 607 to EPA with a letter dated August 26, 1994. After reviewing the submittal for conformance with the completeness criteria in 40 CFR 51, Appendix V, EPA determined the submittal to be administratively and technically complete and notified the Governor of such determination in a letter dated November 1, 1994.

The Governor of Montana submitted revisions to the SIP for Columbia Falls with a letter dated August 26, 1994. The revisions address contingency measures and incorporate minor modifications to the attainment and maintenance demonstrations into the State SIP for the Columbia Falls moderate PM_{10} nonattainment area.

2. Control Strategy (see Section II.1.A.3 for general requirements)

On April 14, 1994 (59 FR 17700), EPA approved the control measures in the Columbia Falls moderate PM_{10} nonattainment area SIP as satisfying the requirement to provide for the implementation of RACM, including RACT. The measures targeted re-entrained road dust, residential wood burning, prescribed burning, industry, and motor vehicle exhaust. Please see

that final rule and associated Technical Support Document (TSD) for further details on the specific control measures in the approved SIP.

3. Revisions to Attainment and Maintenance Demonstrations (see Section II.1.A.4 for General Requirements)

CMB receptor modelling in combination with rollback was chosen as the best tool for the attainment and maintenance demonstrations of the 24-hour standard. EPA approved Montana's attainment and maintenance demonstrations for the Columbia Falls moderate PM_{10} nonattainment area on April 14, 1994 (59 FR 17700). The 24-hour attainment value (*i.e.*, the ambient PM_{10} air quality level expected to be achieved by 1995[8]) was 136.28 μg/m^3, and the annual attainment value was 31.1 μg/m^3. The maintenance values (*i.e.*, ambient PM_{10} air quality levels maintained through January 1, 1998) are equal to the attainment values.

As was discussed in the TSD accompanying EPA's approval action for the Columbia Falls SIP, technical corrections to the attainment demonstration were made subsequent to the Governor's submittal. With the August 26, 1994, contingency measure SIP submittal, the Governor is also incorporating the revised attainment demonstration (contained in the technical corrections noted above) into the SIP narrative. There is a minor additional revision to the street sweeping & sanding control calculation. The revised control credit calculation separates the background particulate emissions prior to applying reductions due to the street sweeping program. The revised calculation yields a minor increase of 32 lbs per day PM_{10} emissions over the original demonstration, an amount approximately equal to 1% of the uncontrolled daily emissions from paved road dust re-entrainment. EPA has evaluated and approves the revised control efficiency calculations. The final attainment demonstration being incorporated and approved by this action predicts a 24-hour attainment value of 136.9 μg/m^3, and an annual attainment value of 31.1 μg/m^3, both well below the respective NAAQS. The SIP continues to adequately demonstrate timely attainment and maintenance of the PM_{10} NAAQS in Columbia Falls and satisfies the requirement to provide for the implementation of RACM (including RACT). For further detail concerning the calculations, see the TSD for this action.

4. Contingency Measures

The PM_{10} contingency measure plan for Columbia Falls was submitted by the Governor to EPA with a letter dated August 26, 1994. The contingency measure requires mandatory use of liquid de-icer instead of sand, except under special circumstances.

a. Re-entrained Road Dust Contingency Measure. On April 4, 1994, the Flathead County Board of County Commissioners passed Resolution No. 867B which amended the Flathead County Air Pollution Control Program. The amendments include Rule 607 which is a contingency plan that implements the mandatory use of liquid de-icer on all roads, with the exception of priority routes with extraordinary circumstances, within the Columbia Falls Air Pollution Control District. Rule 607 provides that within 60 days of notification by EPA that the SIP for the Columbia Falls moderate PM_{10} nonattainment area failed to timely attain the PM_{10} NAAQS or make reasonable further progress the following will occur:

Within the Columbia Falls Air Pollution Control District, only liquid de-icer shall be placed on any road or parking lot with the exception of priority routes with extraordinary circumstances existing. During extraordinary events, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test, of less than or equal to 7, or other testing method which the Control Board deems suitable, and has a content of material less than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.

b. Effectiveness of the Contingency Measure. If the re-entrained road dust contingency measure is implemented, the control efficiency of the re-entrained road dust measures will be 58% in the 24-hour attainment demonstration (an increase of 28% over the control efficiency of the re-entrained road dust measures in the original SIP attainment demonstration). This calculation takes into account the use of the liquid de-icer, the current requirements for use of washed sand, and the existing street sweeping measures (see the TSD accompanying EPA's approval, 59 FR 17700, of the Columbia Falls PM_{10} SIP, available at the EPA address at the beginning of this document, for further details on the existing re-entrained road dust strategies). Total reduction from the contingency measure is calculated to be 605 more pounds of PM_{10} reduced per day than without the contingency measure.

EPA believes that 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 135.9 μg/m^3 (see Section II.A.2. above and the TSD). Furthermore, the predicted 24-hour ambient concentration resulting if the contingency measure is implemented is 122.5 μg/m^3. Since the 24-hour PM_{10} NAAQS is 150 μg/m^3, this established safety margin further supports the reasonableness of these contingency measures.

5. Enforceability Issues

The Flathead County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A stipulation between the MDHES, the Flathead County Commission, and the Kalispell and Columbia Falls City Councils was signed on November 15, 1991 to delineate responsibilities and authorities between the MDHES and the local authorities. On November 15, 1991, the MBHES issued a Board Order effectuating the program. On January 24, 1992, the MBHES approved the Columbia Falls PM_{10} plan and local program. The stipulation, Board Order, and resolution were incorporated into the SIP on April 14, 1994 (59 FR 17700).

On May 20, 1994, the MBHES issued a Board Order approving the Columbia Falls PM_{10} contingency measures. The related regulation, and the May 20, 1994, Board Order were submitted to EPA in the August 26, 1994 submittal as a revision to the Montana SIP.

The Flathead County Program is in effect now. The State of Montana has a program that will ensure that the contingency measures contained in the Columbia Falls PM_{10} SIP are adequately enforced. EPA believes that the State's and Columbia Falls' existing air enforcement program will be adequate. The TSD for this action contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

3. Deletion of Butte TSP Requirement. 40 CFR 52.1380 contains a conditional approval of a total suspended particulate (TSP) plan for Butte. The condition required that the State submit,

[8] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment of the PM_{10} NAAQS by January 1, 1995. EPA approved the State's demonstration on the basis of the de minimis differential between the two dates.

by February 15, 1981, a revised airborne particulate regulation as specified in its October 4, 1979, submittal to EPA. Since the time that this requirement was put in place, EPA has revised the particulate matter standard to be based on PM_{10} rather than TSP. Furthermore, Montana has submitted and EPA approved a SIP revision providing for attainment and maintenance of the PM_{10} NAAQS for the Butte moderate PM_{10} nonattainment area (March 11, 1994, 59 FR 11550). Thus, since TSP is no longer the regulated form of particulate matter and has been replaced by PM_{10}, and since Montana has a federally approved SIP meeting all requirements of the CAA for the Butte PM_{10} nonattainment area, EPA finds 40 CFR 52.1380 obsolete and is deleting the section.

III. Final Action

EPA is approving Montana's Kalispell SIP revision submitted on November 25, 1991 with additional submittals, critical to the Kalispell SIP, made on January 11, 1994, August 26, 1994, and July 18, 1995. These submittals address PM_{10} requirements which were due on November 15, 1991. Among other things, the State of Montana has demonstrated that the Kalispell moderate PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994. EPA is also approving the Flathead County Air Pollution Control Program submitted on November 25, 1991 and resubmitted on August 26, 1994. In addition, EPA is approving Montana's SIP revisions for Kalispell and Columbia Falls which address PM_{10} contingency measure plans, which were due on November 15, 1993. The plan for the Kalispell PM_{10} nonattainment area was submitted by the Governor with a letter dated August 26, 1994 with additional materials submitted on July 18, 1995. The plan for the Columbia Falls PM_{10} nonattainment area was submitted by the Governor with a letter dated August 26, 1994. This submittal also included minor revisions to the attainment and maintenance demonstrations for Columbia Falls.

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 revision should adverse or critical comments be submitted. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective May 20, 1996 unless, within 30 days of its publication, adverse or critical comments are received.

If such comments are received, 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. 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 May 20, 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. 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. 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).

V. Petition Language

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 May 20, 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)).

VI. Executive Order (EO) 12866

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

VII. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 and subchapter I, part D, of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a 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.

List of Subjects in 40 CFR Part 52

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

Dated: September 29, 1995.

Jack W. McGraw,

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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(40) The Governor of Montana submitted a PM_{10} plan for Kalispell, Montana in a letter dated November 25, 1991. The Governor of Montana later submitted additional materials in letters dated January 11, 1994, August 26, 1994, and July 18, 1995. The August 26, 1994, and July 18, 1995 submittals also contain the Kalispell Contingency Measure Plan. The August 26, 1994, submittal also contains the Columbia Falls PM_{10} contingency measures and minor revisions to the attainment and maintenance demonstrations for the moderate PM_{10} nonattainment area SIP for Columbia Falls. Finally, the August 26, 1994, submittal contains revisions to the Flathead County Air Pollution Control Program regulations.

(i) Incorporation by reference.

(A) Stipulations signed September 15, 1993 between the Montana Department of Health and Environmental Sciences and the following industries: A–1 Paving; Equity Supply Company; Flathead Road Dept. (two stipulations issued); Klingler Lumber Co.; McElroy and Wilkins; and Montana Mokko.

(B) Stipulations signed September 17, 1993 between the Montana Department of Health and Environmental Sciences and the following industries: Pack and Company, Inc.; Pack Concrete; and Plum Creek Inc. (Evergreen).

(C) Board Order issued on September 17, 1993, by the Montana Board of Health and Environmental Sciences enforcing emissions limitations specified by stipulations signed by both the Montana Department of Health and Environmental Services and participating facilities. The participating facilities included: A–1 Paving; Equity Supply Company; Flathead Road Dept. (two stipulations issued); Klingler Lumber Co.; McElroy and Wilkins; Montana Mokko; Pack and Company, Inc.; Pack Concrete; and Plum Creek Inc. (Evergreen).

(D) Flathead County Board of Commissioners Resolution No. 867B, dated April 4, 1994, adopting the Flathead County Air Pollution Control Program.

(E) Board Order issued May 20, 1994, by the Montana Board of Health and Environmental Sciences approving the Flathead County Air Pollution Control Program.

(F) Flathead County Air Pollution Control Program, including all regulations found in Chapter VIII, Sub-Chapters 1–6, effective May 20, 1994.

(ii) Additional material.

(A) Montana Smoke Management Plan, effective April 28, 1988, which addresses prescribed burning requirements.

(B) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

§ 52.1380 [Removed and reserved]

3. Section 52.1380 is removed and reserved.

[FR Doc. 96–6004 Filed 3–18–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[VA 0054–5006b; FRL–5441–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Interim Final Determination that the Richmond, Virginia Ozone Nonattainment Area is Exempt From NO_X RACT Requirements for Purposes of Staying Sanctions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's Federal Register, EPA has published a notice of proposed rulemaking proposing approval of the Commonwealth of Virginia's petition to exempt the Richmond ozone nonattainment area from the nitrogen oxides (NO_X) reasonably available control technology (RACT) requirement under section 182(f) of the Clean Air Act (Act). Based on the proposed approval, EPA is making an interim final determination by this action that, with respect to the NO_X RACT requirement, the State, contingent upon continued monitoring of attainment of the ozone national ambient air quality standard (NAAQS), has corrected the deficiency which was the basis for the sanctions clock . This action will stay the application of the offset sanction which was imposed January 8, 1996 and, if final action is not taken by July 8, 1996, defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's proposed approval of the State's submittal. EPA will publish a final action taking into consideration any comments received on EPA's proposed action and this interim final action.

EFFECTIVE DATE. March 19, 1996.

Comment date. Comments must be received by April 18, 1996.

ADDRESSES: Comments should be sent to Marcia L. Spink, Associate Director, Air Programs, (3AT00), Air, Radiation and Toxics Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19103. The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Christopher H. Cripps, (215) 597–0545, at the EPA Region III address above or via e-mail at cripps.christopher@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 1994, EPA sent a letter to the Governor of Virginia stating that, under section 179 of the Act, EPA made a finding that Virginia failed to submit a state implementation plan (SIP) revision for NO_X RACT. This finding commenced the sanctions process outlined by section 179. The two to one (2:1) offset sanction has been in effect in the Richmond ozone nonattainment area as of January 8, 1996 as a result of the July 8, 1994 finding of failure to submit. On December 18, 1995, the Director of the Virginia Department of Environmental Quality (VA DEQ) submitted on behalf of the Commonwealth of Virginia a petition pursuant to section 182(f) of the Act to exempt the Richmond moderate ozone nonattainment area from the NO_X RACT requirement. The petition is based upon ambient air monitoring data for 1993, 1994 and 1995 ozone seasons which shows that the Richmond ozone nonattainment area is meeting the ozone NAAQS. This petition could not be submitted until the monitoring data for the entire 1995 ozone season was quality assured under the procedures of 40 CFR Part 58 and recorded in the EPA's Aerometric Information Retrieval System (AIRS). In the Proposed Rules