DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8503]

RIN 1545–AS19

Credit for Employer Social Security Taxes Paid on Employee Tips

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to employers in determining the credit for employer FICA taxes paid with respect to certain tips received by employees of food and beverage establishments. The temporary regulations clarify that the credit is effective for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also clarify that the credit applies only to taxes paid on tips reported to the employer by its employees.

The text of these temporary regulations also serves as the text of proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to the credit for employer taxes paid pursuant to the Federal Insurance Contributions Act (FICA) with respect to certain tips received by employees of food and beverage establishments. The credit is described in section 45B of the Internal Revenue Code (Code), which was added by section 13443 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312).

Explanation of Provisions

Section 45B of the Code describes a business tax credit allowable under section 38 for employer FICA taxes paid by food and beverage establishments on tips received by their employees. The credit is equal to the employer's FICA tax obligation attributable to the employee tips. However, the credit is reduced if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate.

The temporary regulations clarify that the credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

The temporary regulations also clarify that the credit applies only to taxes paid on tips reported to the employer by its employees. In general, under section 6053(a) and § 31.6053–1, employees who receive tips in any calendar month must report all those tips in a written statement or statements furnished to the employer by the 10th day of the following month. Under section 3121(q), for employment tax purposes, these reported tips are treated as remuneration for employment and are deemed to have been paid by the employer in the same manner as regular wages when the tips are reported. At that point, they are subject to income tax and employee FICA tax withholding, and the employer must make tax deposits, report the tips on the employer's quarterly employment tax return (Form 941), and show the tips in Box 1 (wages) of the employees' Forms W–2.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.45B–1T is added to read as follows:

§ 1.45B–1T Credit for certain employer social security taxes paid with respect to employee tips (temporary).

(a) *Scope of credit.* Section 45B describes a business tax credit allowable under section 38 for the excess employer social security tax. That term is defined in section 45B(b) and depends in part on the tips received by employees. In determining the excess employer social security tax, only tips received by an employee and reported by the employee to the employee's employer pursuant to section 6053(a) and § 31.6053–1 of this chapter are taken into account.

(b) *Effective date* Section 45B and this section are effective for taxes paid by an employer under section 3111 after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury

[FR Doc. 93–31011 Filed 12–22–93; 8:45 am]

BILLING CODE 4830-01-U

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26 CFR Parts 31 and 602

[TD 8504]

RIN 1545–AS08

Reporting and Deposit of Employment Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to both the reporting and depositing of Federal employment taxes. The final regulations are intended to simplify the current reporting system by removing all "nonpayroll" withheld taxes from reporting on Form 941, Employer's Quarterly Federal Tax Return (or Form 941E, Quarterly Return of Withheld Federal Income Tax and Medicare Tax). The final regulations affect all taxpayers that have "nonpayroll" withheld tax liabilities currently reported quarterly on Form 941 (or 941E).

DATES: These regulations are effective on December 23, 1993.

These regulations apply to payments made after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, telephone (202) 622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1413.

The burden for the reporting requirement contained in § 31.6011(a)–4 is reflected in the burden of Form 945.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC. 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On November 4, 1993, the IRS published a notice of proposed rulemaking in the **Federal Register** (58 FR 58820) proposing amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under sections 6011 and 6302 of the Internal Revenue Code.

Written comments responding to the notice were received and a public hearing was held on December 2, 1993. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Under existing rules, taxpayers use the same form—Form 941 (or Form 941E)—to report both nonpayroll taxes (such as amounts withheld on annuities) and payroll taxes. Reporting both types of taxes on the same form makes it difficult for taxpayers with separate departments for payroll disbursements and for other disbursements to reconcile amounts to be deposited. To eliminate this problem, the final regulations require both the separate reporting and depositing of the two types of taxes.

Under the final regulations, taxes currently reported quarterly on Form 941 will continue to be reported on that form unless they are nonpayroll withheld taxes. Nonpayroll withheld taxes, however, will be reported annually on new Form 945, Annual Return of Withheld Federal Income Tax. The final regulations define nonpayroll withheld taxes as amounts withheld under: (1) Section 3402(q), relating to withholding on certain gambling winnings, (2) section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States, (3) section 3402(o)(1)(B), relating to withholding on certain annuities, (4) section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income, and (5) section 3406, relating to backup withholding with respect to reportable payments.

A taxpayer will not be required to file its first Form 945 until the first calendar year the taxpayer incurs a nonpayroll tax liability. One commentator suggested that no annual Form 945 be required for any year during which no withholding of nonpayroll taxes occurs. This suggestion is not being adopted at this time because the IRS cannot assume that no tax is due simply because no return has been filed. However, the IRS welcomes and will consider any further comments regarding this suggestion. Accordingly, the final regulations require any taxpayer required to file a Form 945 for one calendar year, to continue filing a Form 945 for each subsequent year, whether or not there is a liability for the subsequent year, until the taxpayer files a final return in accordance with the regulations. Thus, a taxpayer should continue to file the Form 945 and should not file a final return if it is reasonably foreseeable that the taxpayer will have a nonpayroll tax liability in any subsequent calendar year. This annual filing requirement helps preserve the integrity of the tax system for nonpayroll withheld taxes. This is consistent with the requirement that a Form 941 be filed for each quarter, whether or not there is a liability for that quarter.

The final regulations also amend the Federal employment tax deposit rules to reflect the change in reporting. Under the final regulations, taxes reported on Form 945 are deposited separately from taxes reported on Form 941. Form 8109, Federal Tax Deposit Coupon, has been revised to reflect these changes.

Deposits of taxes reported on Form 945 will be made in accordance with rules that generally parallel the existing employment tax deposit regulations. Under the final regulations, deposits of taxes reported on Form 945 are made under either a monthly or a semi-weekly rule. For calendar years 1994 and 1995, a taxpayer's status as a monthly or semi-weekly depositor for taxes reported on Form 945 will generally be the same as the taxpayer's depositor status on January 1, 1994, for taxes reported on Form 941. One commentator suggested that all deposits of nonpayroll withheld taxes be made on a monthly basis. This suggestion was not adopted in order to retain as much consistency as possible in the deposit rules for taxes reported on Form 941 and on Form 945.

Beginning with calendar year 1996, however, a taxpayer's depositor status for taxes reported on Form 945 will be determined annually based on a lookback to the amount of taxes reported on Form 945 for the second preceding calendar year (the lookback period). For example, for calendar year 1996 a taxpayer's depositor status will depend on the amount of taxes reported on Form 945 for calendar year 1994. If the taxpayer reported nonpayroll withheld tax liabilities of $50,000 or less on the Form 945 for the lookback period, the taxpayer is a monthly depositor for the calendar year. If the taxpayer reported nonpayroll withheld tax liabilities in excess of $50,000 on Form 945 for the lookback period, the taxpayer is a semi-weekly depositor for the calendar year. New taxpayers are considered to have a nonpayroll withheld tax liability of zero for any calendar year in which the taxpayer did not exist.

For calendar year 1994 and all subsequent years, if the amount of accumulated nonpayroll withheld taxes equals or exceeds $100,000 for any day within a deposit period (monthly or semi-weekly), the taxpayer is subject to the One-Day rule of § 31.6302–1(c)(3) of the regulations for such amount. A taxpayer that is a monthly depositor when the taxpayer becomes subject to the One-Day rule immediately becomes a semi-weekly depositor for the remainder of that calendar year and for the succeeding calendar year.

Effective Date

The final regulations are effective with respect to payments made after December 31, 1993.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the notice of proposed rulemaking was submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department have participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

Paragraph 1. The authority citation for part 31 is amended by adding entries to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6011(a)–4 also issued under 26 U.S.C. 6011. * * *

Section 31.6302–4 also issued under 26 U.S.C. 6302 (a) and (c). * * *

Par. 2. Section 31.6011(a)–4 is amended as follows:

1. The heading for § 31.6011(a)–4 is revised.
2. The heading for paragraph (a) is revised.
3. Headings are added for paragraphs (a) (1) through (3).
4. The text of paragraph (a)(1) is revised.
5. Paragraph (b) is redesignated as paragraph (c).
6. New paragraph (b) is added.
7. The revised and added provisions read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a) (2) and (3) and (b) of this section, and in § 31.6011(a)–8, Form 941 is the form prescribed for making the return required under this paragraph.

(2) *Wages paid for domestic service.* * * *

(3) *Wages paid for agricultural labor.* * * *

(b) *Withheld from nonpayroll payments.* Every person required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for calendar year 1994 and for each subsequent calendar year (whether or not any such tax is required to be withheld therein) until a final return is made in accordance with § 31.6011(a)–6. Every person not required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for the first calendar year thereafter in which the person is required to withhold such tax and for each subsequent calendar year until a final return is made in accordance with § 31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for service in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

Par. 3. The heading for paragraph (a) of § 31.6071(a)–1 is revised to read as set forth below.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*— * * *

* * * * *

Par. 4. Section 31.6302–1 is amended as follows:

1. Paragraphs (e)(1) (iii) and (iv) are revised.

2. The last sentence of paragraph (e)(2) is revised.

3. The revisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(e) * * *

(1) * * *

(iii) The income tax withheld under sections 3402 and 3405, except income tax withheld with respect to payments made after December 31, 1993, on the following—

(A) Certain gambling winnings under section 3402(q);

(B) Retirement pay for service in the Armed Forces of the United States under section 3402;

(C) Certain annuities described in section 3402(o)(1)(B); and

(D) Pensions, annuities, IRAs, and certain other deferred income under section 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments made before January 1, 1994.

(2) * * * Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

* * * * *

Par. 5. In § 31.6302–3, paragraph (b) is revised to read as follows:

§ 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992, and before January 1, 1994.

* * * * *

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of § 31.6302–1 without taking into account the other taxes described in paragraph (e) of § 31.6302–1 for purposes of determining when tax withheld under section 3406 must be deposited. A taxpayer that treats backup withholding amounts separately with respect to reportable payments made after December 31, 1992, and before January 1, 1994, shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited under that section. See § 31.6302–4 for rules regarding the deposit of income tax withheld under section 3406 with respect to reportable payments made after December 31, 1993.

* * * * *

Par. 6. Section 31.6302–4 is added to read as follows:

§ 31.6302–4 Federal tax deposit rules for withheld income taxes attributable to nonpayroll payments made after December 31, 1993.

(a) *General rule.* With respect to nonpayroll withheld taxes attributable to nonpayroll payments made after December 31, 1993, a taxpayer is either a monthly or a semi-weekly depositor based on an annual determination. Except as provided in this section, the rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of nonpayroll withheld taxes as though they were employment taxes. Paragraph (b) of this section defines nonpayroll withheld taxes. Paragraph (c) of this section provides rules for determining whether a taxpayer is a monthly or a semi-weekly depositor.

(b) *Nonpayroll withheld taxes defined.* For purposes of this section, effective with respect to payments made after December 31, 1993, *nonpayroll withheld taxes* means—

(1) Amounts withheld under section 3402(q), relating to withholding on certain gambling winnings;

(2) Amounts withheld under section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States;

(3) Amounts withheld under section 3402(o)(1)(B), relating to certain annuities;

(4) Amounts withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

(c) *Determination of deposit status*—(1) *Rules for calendar years 1994 and 1995.* On January 1, 1994, a taxpayer's depositor status for nonpayroll withheld taxes is the same as the taxpayer's status on January 1, 1994, for taxes reported on Form 941 under § 31.6302–1. A taxpayer generally retains that depositor status for nonpayroll withheld taxes for all of calendar years 1994 and 1995. However, a taxpayer that under this paragraph (c) is a monthly depositor for 1994 and 1995 will immediately lose that status and become a semi-weekly depositor of nonpayroll withheld taxes if the One-Day rule of § 31.6302–1(c)(3) is triggered with respect to nonpayroll withheld taxes. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(2) *Rules for calendar years after 1995*—(i) *In general.* For calendar years after 1995, the determination of whether a taxpayer is a monthly or a semi-weekly depositor for a calendar year is based on an annual determination and generally depends on the aggregate amount of nonpayroll withheld taxes reported by the taxpayer for the lookback period as defined in paragraph (c)(2)(iv) of this section.

(ii) *Monthly depositor.* A taxpayer is a monthly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) is $50,000 or less. A taxpayer ceases to be a monthly depositor of nonpayroll withheld taxes on the first day after the taxpayer is subject to the One-Day rule in § 31.6302–1(c)(3) with respect to nonpayroll withheld taxes. At that time, the taxpayer immediately becomes a semi-weekly depositor of nonpayroll withheld taxes for the remainder of the calendar year and the succeeding calendar year. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(iii) *Semi-weekly depositor.* A taxpayer is a semi-weekly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) exceeds $50,000.

(iv) *Lookback period.* For purposes of this section, the lookback period for nonpayroll withheld taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1996 is calendar year 1994. A new taxpayer is treated as having nonpayroll withheld taxes of zero for any calendar year in which the taxpayer did not exist.

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, Annual Return of Withheld Federal Income Tax, separately from taxes reportable on Form 941, Employer's Quarterly Federal Tax Return. Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit taxes reported on Form 945 and taxes reported on Form 941. (See paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) A deposit of taxes reported on Form 945 for one calendar year must be made separately from a deposit of taxes reported on Form 945 for another calendar year.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. Section 602.101(c) is amended by revising the entry for § 31.6011(a)–4 and adding entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.6011(a)–4	1545–0034 1545–0035 1545–0718 1545–1413
* * * * *	
31.6302–1	1545–1413
31.6302–2	1545–1413
31.6302–3	1545–1413
31.6302–4	1545–1413
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 93–31159 Filed 12–22–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO18–1–6177; FRL–4815–3]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State implementation plan (SIP) submitted by the State of

Colorado for the purpose of bringing about the 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 by the State on April 9, 1992 to satisfy certain federal requirements for an approvable nonattainment area PM–10 SIP for Canon City, Colorado.

In addition, EPA is amending the nonattainment area boundary for the Canon City nonattainment area to include some of the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

EFFECTIVE DATE: This rule will become effective on January 24, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405;

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

Background

Canon City, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Canon City).) 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. 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.

Those States containing initial moderate PM–10 nonattainment areas (i.e., those areas designated nonattainment for PM–10 under section 107(d)(4)(B) of the Act) 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 PM–10 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)). Revisions to satisfy these requirements were submitted by the State on January 14, 1993, and EPA will be taking action on these requirements in a separate **Federal Register** notice. Such States also were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13543–13544.) On November 12, 1993, the State adopted PM–10 contingency measures for Canon City. EPA will also be taking action on these measures in a separate **Federal Register** notice.

On September 21, 1993, EPA announced its proposed approval of the Canon City, Colorado moderate PM–10 nonattainment area SIP as meeting those moderate PM–10 nonattainment area SIP requirements due on November 15, 1991 (see 58 FR 49001–49005). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Canon City moderate nonattainment area PM–10 SIP, taking into consideration the specific factual issues presented. Also in that action, EPA proposed to amend the boundary of the Canon City PM–10 nonattainment area to include some of the suburban area of Canon City, based on information submitted by the State that provided a demonstration that the revised boundary more accurately represented the Canon City airshed. EPA requested public comments on all aspects of the proposed rulemaking pertaining to Canon City (see 58 FR 49005). No comments were received on the proposed rulemaking.

Final Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). On April 9, 1992, the Governor of Colorado submitted a revision to the SIP which was intended to satisfy those moderate PM–10 nonattainment area SIP requirements due for Canon City on November 15, 1991. As described in EPA's proposed approval of this SIP submittal, the Canon City moderate PM–10 nonattainment area plan includes (among other things): (1) A comprehensive and accurate emissions inventory; (2) an explanation that the implementation of potentially available control measures are not reasonably required for attainment and maintenance of the PM–10 NAAQS in Canon City, thus satisfying the RACM (including RACT) and quantitative milestone/RFP requirements; (3) a demonstration (including air quality modeling) that attainment of the PM–10 NAAQS will continue to be achieved in Canon City by December 31, 1994; and (4) enforceability documentation (see 58 FR 49001–49005, September 21, 1993). Further, EPA proposed to determine that major stationary sources of precursors of PM–10 do not contribute

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 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. 7401, et seq.

significantly to PM–10 levels in excess of the NAAQS in Canon City.[2] Lastly, EPA proposed to amend the Canon City moderate PM–10 nonattainment area boundary to include some of the additional suburban area of Canon City based on a SIP equivalent demonstration submitted by the State which showed that the revised boundary more accurately represents the Canon City airshed. Please refer to EPA's notice of proposed rulemaking (58 FR 49001) and the TSD for a more detailed discussion of these elements of the Canon City plan.

In this final rulemaking, EPA announces its approval of those elements of the Canon City, Colorado moderate PM–10 nonattainment area SIP submittal that were due on November 15, 1991 and submitted on April 9, 1992. EPA believes the State has adequately met all of the moderate PM–10 nonattainment area requirements for the Canon City PM–10 nonattainment area which were due November 15, 1991 and submitted by the State on April 9, 1992.

EPA is also announcing its determination that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Canon City.

Lastly, EPA announces that the Canon City moderate PM–10 nonattainment area description specified in 40 CFR 81.306 is replaced with the following boundary description:

Township 18S—Range 70W

All of sections 21, 22, 27, 28, 33, and 34; the E½, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W½ of sections 23, 26, and 35;

Township 19S—Range 70W

All of sections 3, 4, 9, 10; E½, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W½ of sections 2 and 11.

[2] The consequences of this finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Note that EPA's 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 PM–10 precursors in the area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed on September 21, 1993 (58 FR 49001). As noted elsewhere in this notice, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 10, 1993.

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 52.332 is added to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

On April 9, 1992, the Governor of Colorado submitted the moderate PM–10 nonattainment area plan for the Canon City area. The submittal was made to satisfy those moderate PM–10 nonattainment area SIP requirements which were due for Canon City on November 15, 1991.

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

4. In § 81.306, the PM–10 Nonattainment Areas table is amended by revising the entry for "Canon City" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM-10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*	*	*
Fremont County				
Canon City Area	11/15/90	Nonattainment.	11/15/90	Moderate.
Township 18S—Range 70W: All of sections 21, 22, 27, 28, 33, and 34; the E½, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W½ of sections 23, 26, and 35; Township 19S—Range 70W: All of sections 3, 4, 9, 10; E½, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W½ of sections 2 and 11.				
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[FR Doc. 93-31293 Filed 12-22-93; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Mitigation Directorate, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Directorate has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR,