(Junior Grade) W. W. Gough, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.103 to read as follows:

§ 165.103 Safety and Security Zones; LPG Vessel Transits in Captain of the Port Portland, Maine Zone, Portsmouth Harbor, Portsmouth New Hampshire.

(a) *Location.* The following areas are safety and security zones: (1) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas (LPG) vessel while it is moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and (2) except as provided in paragraph (a)(1) of this section, in the waters of the Captain of the Port, Portland, Maine zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Captain of the Port (COTP), Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port, Portland, Maine.

(3) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

Dated: May 13, 2002.

M.P. O'Malley,

Commander, Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 02–13006 Filed 5–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0067; FRL–7215–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver PM_{10} Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 30, 2001, the Governor of the State of Colorado submitted a State Implementation Plan (SIP) revision for the purpose of establishing a redesignation for the Denver, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) under the 1987 standards. The Colorado Air Pollution Control Division's submittal, among other things, documents that the Denver area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for thirteen years. EPA is proposing to approve the redesignation

request and maintenance plan because the State has met the applicable requirements of the Clean Air Act, as amended. This action is being taken under sections 107, 110, and 175A of the Clean Air Act (Act).

DATES: Written comments must be received on or before June 24, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, we mean the Environmental Protection Agency (EPA).

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I. EPA's Proposed Action

A. What Action Is EPA Proposing To Take?

We are proposing to approve the Governor of Colorado's submittal of July 30, 2001, that requests a redesignation for the Denver nonattainment area to attainment for the 1987 PM_{10} standards. We are using 1998–2000 ambient air quality data from the Denver nonattainment area as the basis for our decision. We are also proposing to approve the maintenance plan for the Denver PM_{10} nonattainment area, which was submitted with the State's July 30, 2001 redesignation request. In conjunction with the maintenance plan, the Governor also submitted revisions to Colorado's Regulation No. 1, ''Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides,'' and Colorado's Regulation No. 16, ''Street Sanding Emissions.'' We are proposing to approve this request, the maintenance plan and its accompanying regulation revisions because the Colorado Air Pollution Control Division (Colorado) has adequately addressed all of the requirements of the Act for redesignation to attainment applicable to the Denver PM_{10} nonattainment area. Upon the effective date of a subsequent final action, the Denver area's designation status under 40 CFR part 81 will be revised to attainment. By using ''Denver'' or the ''Denver area,'' we mean Denver, Jefferson, and Douglas Counties, as well as part of Boulder, Adams and Arapahoe Counties.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Summary of Redesignation Request and Maintenance Plan

A. What Requirements Must Be Followed for Redesignations to Attainment?

In order for a nonattainment area to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the Clean Air Act (CAA) must be met:

(i) We must determine that the area has attained the NAAQS;

(ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the Act;

(iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992 guidance entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (referred to in this action as the Calcagni Memorandum) outlines how to assess the adequacy of redesignation requests against the conditions listed above.

On July 30, 2001, the Governor of Colorado submitted a revision to the SIP for the Denver area and a request that we redesignate the area to attainment for PM_{10}. The following is a brief discussion of how Colorado's redesignation request and maintenance plan meets the requirements of the Act for redesignation of the Denver area to attainment for PM_{10}.

B. Does the Denver Redesignation Request and Maintenance Plan Meet the CAA Requirements?

i. Attainment of the PM_{10} NAAQS

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR part 50, appendix K. A State must demonstrate that an area has attained the PM_{10} NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum PM_{10} concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, three consecutive years of complete air quality data must be used.

Between 1998 and 2000, Colorado operated thirteen PM_{10} monitors, which were either State and Local Air Monitoring Stations (SLAMS) or National Air Monitoring Sites (NAMS), in the Denver PM_{10} nonattainment area. As part of the redesignation request for Denver, Colorado submitted ambient air quality data from the monitoring sites which demonstrates that the area has attained the PM_{10} NAAQS. This air quality data had been quality-assured and placed in AIRS on a quarterly basis. Only one exceedance of the 24-hour PM_{10} NAAQS was measured between 1998 and 2000. In 1999, the Adams City monitor recorded a 24-hour value of 160 μg/m3, which is an exceedance. Because data collection was less than 100% at this monitoring site, the expected exceedance rate, as calculated according to 40 CFR part 50, appendix K, for 1999 at this site was 1.16. For 1998 and 2000, it was 0.0. Thus, the three-year average was less than 1.0, which indicates the Denver area attained the 24-hour PM_{10}

NAAQS. All other sites had expected exceedance rates of 0 for this three-year period. In addition, there have been no reported exceedances of the PM_{10} NAAQS so far in 2001. Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that the Denver area is also in attainment with the annual PM_{10} NAAQS. There was no violation of the annual standard for the three year period from 1998 through 2000. Further information on PM_{10} monitoring is presented in Chapter 3, section B of the redesignation request and maintenance plan. We have evaluated the ambient air quality data and believe that Colorado has adequately demonstrated that the PM_{10} NAAQS has been attained in the Denver area.

ii. State Implementation Plan Approval

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Those States containing initial moderate PM_{10} nonattainment areas were required to submit a SIP by November 15, 1991 which demonstrated attainment of the PM_{10} NAAQS by December 31, 1994. However, under section 188(d) of the CAA, moderate PM_{10} nonattainment areas are eligible for up to two one-year extensions of their attainment dates if they meet the requirements of the Act. Colorado requested an attainment date extension for Denver and it was granted on October 6, 1995 (60 FR 52312). The Denver nonattainment area subsequently attained the NAAQS by December 31, 1995, which was the area's applicable attainment date following the granting of the attainment date extension. Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k). We approved the PM_{10} contingency measures for the area on September 23, 1996 (61 FR 49682). We approved the PM_{10} SIP for Denver on April 17, 1997 (62 FR 18716) as meeting those moderate PM_{10} nonattainment plan requirements that were due to EPA on November 15, 1991. The transportation budgets required under the transportation conformity rule were approved on March 31, 1998 (63 FR 15294).

iii. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The control measures in the Denver PM_{10} element of the Colorado SIP were adopted by the AQCC on October 19, 1995, and were approved by the EPA on April 17, 1997 (62 FR 18716). The SIP element's emission control plan was based on emission reductions from stationary source controls, re-entrained road dust controls, woodburning restrictions, and mobile source emission control programs. These permanent and enforceable control measures are explained in more detail below.

As part of the PM_{10} SIP, Denver has been implementing the requirements of Colorado Regulation No. 1 ''Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides.'' The portion of this regulation for which PM_{10} emission reduction credits are used provides stationary source emission control regulations. These control measures include regulation limits on specific units for precursor emissions (NO_X and SO_2) at Public Service Company of Colorado's Cherokee, Arapahoe and Valmont Electric Generating Stations. There are also restrictions on the use of oil as a backup fuel for natural gas to control particulate emissions from the following stationary sources in the Denver area: Public Service Company of Colorado's Valmont and Zuni Electric Generating Stations, Public Service Company of Colorado's Delegany Steam Generating Station, University of Colorado Health Sciences Center (Fitzsimmons), U.S. Department of Energy's Rocky Flats Plant, Gates Rubber Company, and Trigen-Colorado Energy Corporation [1] (this requirement only applies to the company's Golden, Colorado facility). This regulation requires that natural gas is the only fuel oil to be used from November 1 to March 1 of each year except under certain circumstances that are explained in the regulation. In addition, there are limitations on primary PM_{10} emissions from fuel burning equipment that apply to the boiler units at Public Service Company of Colorado's Arapahoe, Cherokee, and Zuni Electric Generating Stations, as well as Trigen-Colorado Energy Corporation. There are also particulate limitations on all sources with incinerators, limitations on all stationary sources with manufacturing processes (as defined in Colorado's Common Provisions Regulation), and regulations for any source of fugitive particulates. (See Colorado's Regulation No. 1 for more details on these restrictions.)

Denver has also been implementing the requirements of Colorado Regulation No. 4 ''New Wood Stoves and the use of Certain Woodburning Appliances During High Pollution Days.'' The primary strategy of Regulation No. 4 is the mandatory wood burning curtailment program that prohibits most wood burning activity on ''high pollution days'' between November 1st and March 31st of each year in the Denver metropolitan area. Regulation No. 4 also requires all new wood burning stoves and fireplace inserts sold in Colorado to meet both State and Federal emission control standards. In addition to this State regulation, our April 17, 1997 approval of the PM_{10} SIP incorporated 19 local woodburning ordinances and resolutions.

Colorado's Regulation No. 16 covers street sanding and sweeping requirements. Under this regulation, street sand is required to meet stringent specifications to reduce the amount of fines and increase the durability of the sanding materials. With the implementation of this regulation, most of the Denver area governments were required to reduce the amount of street sand applied to their roadways by 20 percent from a base sanding amount (as defined in Colorado Regulation No. 16, this is an average amount of street sanding material applied per lane mile driven by maintenance trucks during snow and ice removal operations according to 1989 data), with the exception of the City of Denver. Denver was required to reduce the amount of street sanding materials applied by 30 percent from the base sanding amount. Emissions in the Central Denver area and the Interstate 25 Corridor area were to be reduced by 50 percent from the base sanding amounts. The street sweeping requirements for the Denver nonattainment area include additional street sweeping in the Denver central

[1] The federally approved version of Regulation No. 1 lists this source as Coors Brewing Company, Coors Brewery, Golden, CO; the boiler units at the brewery were sold to Trigen-Colorado Energy Corporation since that version of the regulation was approved. Colorado has subsequently made revisions to this regulation, which include changing the name for this facility. Colorado will submit these revisions to EPA in the future in order for them to be federally approved.

business district and the Interstate 25 Corridor area after each sanding event.

The mobile source control measures implemented with the PM_{10} SIP include Colorado's Regulation No. 11, ''Motor Vehicle Emissions Inspection Program,'' Regulation No. 12 ''Diesel Inspection/Maintenance Program,'' and Regulation No. 13 ''Oxygenated Fuels Program.''

Stationary source construction permits for Public Service Company of Colorado's Cherokee Electric Generating Station, Purina Mills, Electron Corporation, Trigen-Colorado Energy Corporation, Rocky Mountain Bottle Company (which includes earlier permits that were issued in 1993 under the former name of Coors Brewing Company), and Conoco Refinery were incorporated by reference in our April 17, 1997 approval of the PM_{10} SIP. Thus, EPA also viewed these permits as enforceable control measures under the SIP.

Colorado Regulation No. 3 ''Air Contaminant Emissions Notices'' and No. 6 ''Standards of Performance for New Stationary Sources'' also provide for stationary source controls. The federally approved portions of these regulations are part of the state-wide SIP and weren't approved specifically with the Denver PM_{10} SIP.

We have evaluated the various State and Federal control measures, the original 1989 base year emission inventory and the original 1995 attainment year emission inventory, and believe that the improvement in air quality in the Denver nonattainment area has resulted from emission reductions that are permanent and enforceable.

iv. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 107(d)(3)(E) of the Act requires that, for a nonattainment area to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the Act. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, the State must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10 year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. (*See* sections 175A(b) and (d).) Our September 4, 1992 guidance outlines 5 core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are explained in detail below.

a. Attainment Inventory

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (*see* 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, PM_{10} maintenance plans should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to maintain the NAAQS.

An emissions inventory was developed and submitted with the PM_{10} maintenance plan for the Denver area on July 30, 2001. This submittal contains a 1995 attainment year inventory as well as interim-year projection inventories for 2002, 2003, 2005, 2010 and 2015. The 1995 attainment inventory is an updated version of the attainment inventory submitted on March 30, 1995 with the PM_{10} SIP. Due to the nature of Denver's past 24-hour PM_{10} problems, these inventories reflect emission estimates for an average winter weekday after a snow event. The inventories include emissions from all sources of PM_{10} and PM_{10} precursor emissions (nitrogen oxides and sulfur dioxide (NO_X and SO_2)) within the modeling domain for the Denver area. (This modeling domain is actually smaller than the Denver nonattainment area due to technical modeling limitations, but does include all areas with the expected maximum PM_{10} concentrations.) The precursor emissions are important because filter analyses performed in conjunction with chemical mass balance modeling, for the attainment SIP, indicated that a significant portion (35%) of the PM_{10} on the filters consisted of secondary ammonium sulfate and nitrate.

Emission estimates for the inventories were updated based on the most recent demographic and vehicle miles traveled (VMT) estimates from the Denver Regional Council of Governments' November 2000 conformity analysis. This includes population, household, employment and daily VMT estimates. The major contributors identified in the attainment year and projection inventories were on-road mobile source emissions (including vehicle exhaust and re-entrained road dust), fugitive dust emissions from unpaved roads, residential heating emissions, primary PM_{10} emissions from stationary sources, and secondary emissions of NO_X and SO_2 from stationary sources and on-road and off-road mobile sources. More detailed descriptions of the 1995 attainment year inventory and the 2002, 2003, 2005, 2010 and 2015 projected inventories are documented in the maintenance plan in Chapter 4, sections B and C, and in Colorado's technical support documentation. Colorado's submittal contains detailed emission inventory information that was prepared in accordance with EPA emission inventory guidance.[2] Summary emission figures from the 1995 attainment year and the interim projected years are provided in Table II. 1, 2 and 3 below.

TABLE II. 1.—SUMMARY OF PRIMARY PM_{10} EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	7.7	26.1	25.2	25.5	26.1	26.7
Residential Heating*	5.1	4.7	4.7	4.6	4.6	4.5
Other Area Sources**	11.8	12.1	12.1	12.3	12.2	12.1
Non-Road Mobile Sources***	1.2	1.1	1.1	1.0	1.2	1.2
On-Road Mobile Sources****	41.2	42.3	43.3	44.8	48.5	51.1
Total	66.9	86.3	86.5	88.1	92.5	95.6

* Residential Heating includes natural gas, woodstove and fireplace emissions
** Other Area Sources includes fugitive dust from construction and unpaved roads as well as charbroiler emissions
*** Non-Road Mobile Sources includes emissions from all airports, railroads, and industrial and construction equipment

[2] EPA's current guidance on the preparation of PM_{10} emission inventories includes, ''PM_{10} Emission Inventory Requirements,'' September 1994, ''Emission Inventory Improvement Program Technical Report Series, Volumes I–VII,'' July 1997 and September 1999, ''Revised 1999 Naitonal Emission Inventory Preparation Plan,'' February 2001.

**** On-Road Mobile Sources includes exhaust and re-entrained road dust

TABLE II. 2.—SUMMARY OF NO_X EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	137.8	151.2	133.9	128.8	130.4	132.2
Mobile Exhaust	119.4	137.7	130.4	109.6	104.0	87.8
Non-Road Mobile Sources*	22.3	24.9	25.0	27.7	30.3	33.4
Residential Heating**	33.2	39.5	40.5	42.6	46.7	49.8
Total	312.7	353.3	329.8	308.7	311.4	303.2

* Non-Road Mobile Sources includes airport and other non-road emissions
** Residential Heating includes natural gas and woodburning emissions

TABLE II.3.—SUMMARY OF SO_2 EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	175.5	200.2	180.5	181.1	182.0	183.1
Mobile Exhaust	2.5	5.6	5.8	6.1	2.1	2.2
Non-Road Mobile Sources*	1.9	2.3	2.5	2.5	2.8	3.1
Residential Heating**	0.2	0.3	0.3	0.4	0.4	0.4
Total	180.1	208.4	189.1	190.1	187.3	188.8

* Non-Road Mobile Sources includes airport and other non-road emissions
** Residential Heating includes natural gas and woodburning emissions

We note that these tables show significant changes in some source categories and in most cases this is the result of changes to control strategies that will be implemented in future years. This is explained in the following section. Other minor changes in emission categories can be explained by demographics, as explained above. The projected reductions in the residential heating category are from Colorado's estimates for less woodburning in future years. We believe this projection of less woodburning is reasonable.

There have also been several changes made to the stationary source emissions inventory since the development of the PM_{10} SIP for the area. One source, Brannan Sand and Gravel, was treated as a major source of primary particulates in the SIP and modeled at an allowable emission level of 180 tons per year of PM_{10}. Since the development of the PM_{10} SIP, Brannan Sand and Gravel replaced its existing asphalt plant with a new, lower emitting asphalt plant and retained a new permit reflecting this reduction. The result of this reduction was that Brannan Sand and Gravel's emissions now fall below the major source threshold of 100 tons per year primary PM_{10}, as its new allowable emissions under the permit are 4.2 tons per year of PM_{10}. The source is now treated as an area source in the maintenance plan and modeled at its actual emission rate with a growth factor for future years. A correction was also made to the emission inventory to resolve an error made in the emission inventory for the nonattainment SIP which underestimated emissions from the Conoco petroleum refinery.

In addition to the above changes, a new major source of primary particulates (Robinson Brick) was added to the emissions inventory with the maintenance plan because its emissions of PM_{10} were found to be over 100 tons per year. Robinson Brick was then modeled using the sources' allowable emission rates for primary PM_{10}. Following our review, we have determined that Colorado prepared an adequate attainment inventory for the area.

b. Maintenance Demonstration

The September 4, 1992, Calcagni Memorandum states that where modeling was relied on to demonstrate maintenance, the plan is to contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan is to identify and describe the dispersion model or other air quality model used to project ambient concentrations. The maintenance demonstration for the Denver area uses area-wide dispersion modeling for primary PM_{10} and roll-forward modeling for secondary particulate concentrations, which was the same level of modeling used in the original attainment demonstration for the moderate PM_{10} SIP for Denver. The regional air model (RAM) was used for primary PM_{10} area, mobile and minor point sources, and an industrial source complex model (ISC) was used for primary PM_{10} from major point sources modeled at allowable emission levels. Secondary particulate concentrations are projected from measured concentrations during high concentration periods between 1987 and 1992. The projected change in total NO_X and SO_2 emissions from the baseline to future years is also factored into the analysis.

The maintenance plan delineates between the stationary sources considered as major under the SIP and those sources which are considered as minor. The same methodology was used for the Denver PM_{10} maintenance plan as was used in the nonattainment SIP. All sources emitting over 100 tons per year of primary PM_{10} were identified as major stationary sources and modeled in the maintenance demonstration using either the sources' allowable emission limit as specified in the maintenance plan, or that sources' maximum emission potential (PTE). All other sources with primary PM_{10} emissions were treated as area sources in the SIP context and modeled using the sources' current actual emissions with a projected growth factor. The major stationary sources of primary PM_{10} identified in the maintenance plan are: Conoco Denver Refinery, Public Service Company of Colorado's Cherokee, Arapahoe and Zuni Electric Generating Stations, Robinson Brick, Trigen-Colorado Energy Corporation, and the Ultramar Diamond Shamrock refinery.

The methodology used for the stationary sources of secondary emissions (NO_X and SO_2) is also the same as that used in the nonattainment SIP. Sources were modeled using actual emission rates of NO_X and SO_2 if they

met two criteria. The first criteria is that the difference between modeling the source at anticipated actual emission rates versus the allowable emission levels must be less than 1 μg/m³ using the secondary particulate roll-forward model. The second criteria was that the cumulative difference for all the sources modeled using actual emissions must be no more than 2 μg/m³. The sources modeled as major sources of precursor emissions in the maintenance demonstration are: Public Service Company of Colorado's Cherokee, Arapahoe and Valmont Electric Generating Stations, Trigen-Colorado Energy Corporation, and Rocky Mountain Bottle Company.

Since the modeling process is based on five years of meteorological data, the highest 6th highest 24-hour PM_{10} value from all receptors is used to determine if the PM_{10} standard will be maintained in future years. After an analysis, Colorado concluded that the Adams City ambient air quality monitor (located north of Cherokee Electrical Generating Station in Adams County) had the highest 6th highest 24-hour PM_{10} concentration for 2002. For all other projection years (2003, 2005, 2010, and 2015) the Continuous Air Monitoring Project (CAMP) monitor, located at the intersection of Broadway and Champa Street in downtown Denver, was the maximum concentration monitor. This analysis is further detailed in Chapter 4, section C of the maintenance plan and in the Colorado's TSD and is reproduced in Table II.—4 below.

TABLE II.4.—DENVER PM_{10} MODELING RESULTS IN μG/M³:

Sources	2002 (Adams City)	2003 (CAMP)	2005 (CAMP)	2010 (CAMP)	2015 (CAMP)
Area/Mobile/Minor Point Sources (RAM)	80.9	81.1	75.7	80.5	84.7
Major Point Sources (ISC)	0.64	0.01	0.32	0.32	0.32
Secondary Roll-forward	52.6	48.4	46.6	46.6	46.1
Background	14.4	15.4	17.7	17.7	17.7
Total Concentration	148.6	144.9	140.3	145.2	148.8

Since Colorado's submittal of the maintenance plan, Colorado has made some minor technical corrections to the maintenance demonstration. Colorado has now factored maximum potential primary PM_{10} emissions for the Conoco and Ultramar Diamond Shamrock petroleum refineries into the modeling analysis to show maintenance of the PM_{10} standard. In the official July 30, 2001 submittal of the maintenance plan, Colorado had calculated maximum potential to emit for the fluid catalytic cracking units (FCCUs) by using the most conservative AP–42 emission factor and adding an 85% control efficiency to that factor. After the submittal of the maintenance plan, we discovered that this was an inappropriate calculation because the AP–42 emission factors for FCCUs already take into account the 85% control efficiency for internal cyclones that are inherent to the functioning of the units. On April 5, 2002, Colorado submitted a technical correction to the maintenance plan modeling analysis which removed credits for an 85% control efficiency for the FCCU at the two refineries. Colorado re-ran the modeling analysis and found that they could still demonstrate maintenance for the duration of the maintenance plan while modeling the sources at maximum potential to emit.

However, because future year projections in the maintenance plan were below the PM_{10} standard of 150 μg/m³, under 40 CFR 93.124, Colorado was allowed to allocate the difference or ''safety margin'' (1.1 μg/m³ in 2015), to the NO_X emissions budget. This worked out to be equivalent to 13 tons per day of NO_X. Therefore, the 101 tons/day NO_X emissions budget includes this ''safety margin'' of 13 tons/day. (The mobile source budgets are explained in more detail later in this proposed action.)

Colorado's correction to the maintenance demonstration for Conoco and Ultramar Diamond Shamrock only resulted in a 0.3 μg/m³ impact for 2005, 2010 and 2015 [3], and did not increase the maintenance demonstration to a level above 150 μg/m³. However, because the entire ''safety margin'' from 2015 was allocated to the mobile source emission budget for NO_X, it appeared that either the resulting emission budget would need to be changed, or another source in the SIP would need to be reduced to offset the 0.3 μg/m³ increase. But, a recent federal consent decree will require significant emission reductions at the Conoco facility before 2015.

On December 20, 2001, a proposed Complaint and Consent Decree in United States v. Conoco Inc. was lodged with the United States District Court for the Southern District of Texas. (See 67 FR 107 for the notice of lodged consent decree.) Under the proposed consent decree, Conoco Denver Refinery's FCCU is required to comply with a New Source Performance Standard (NSPS), Subpart J, emissions limit for PM of 1 pound per 1000 pounds of coke burned by no later than June 30, 2006. This restriction will limit Conoco to approximately 67 tons per year of primary PM_{10}, which is far less than the 1233 tons per year which Colorado used to re-model Conoco's emissions and less than the 185 tons per year Colorado used in the maintenance plan; this new limit will more than offset the 0.3 μg/m³ increase which would have affected the year 2015 ''safety margin'' allocation. Because it is based on an NSPS requirement, this new PM limit at Conoco will be permanent. We anticipate court approval of the Conoco consent decree in the near future. In the event court approval is not forthcoming, we may need to reevaluate this proposal.

i. Control Strategy

According to the Calcagni memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A State can't take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions. Emission reductions from source shutdowns can be considered permanent and

[3] The State determined that the entire 0.3 μg/m³ impact results from emission inventory increases at the Conoco FCCU; no impacts result from re-calculation of values for Ultramar Diamond Shamrock.

enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.

In preparing the Denver PM_{10} maintenance plan, Colorado has chosen to make revisions to its control strategy. However, as demonstrated above, the Denver area is expected to maintain the PM_{10} NAAQS into the future despite these changes. The control strategy which is being approved with this action is explained here. As explained previously, Colorado Regulation No. 4, ''New Wood Stoves and the use of Certain Woodburning Appliances During High Pollution Days,'' along with local woodburning ordinances was approved with the PM_{10} SIP. There are no changes being made to this control program with this action. There are also no changes approved with this action for Regulation No. 11, the Automobile Inspection and Readjustment Program. Changes to this regulation were approved in a **Federal Register** action on December 14, 2001 (66 FR 64751) as part of the carbon monoxide maintenance plan. No further changes to this program were made for the PM_{10} maintenance plan.

As with the PM_{10} attainment SIP, part of the PM_{10} control strategy in the maintenance plan relies on the Federal Motor Vehicle Control Program (FMVCP). In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as Denver. The control program that Colorado uses in the PM_{10} maintenance plan includes emission reduction credits from our Tier II motor vehicle emissions standards and sulfur in gasoline. The new vehicle emission standards lower the average emission standards to 0.07 grams per mile of NO_X and begin in 2004 with a 3 year phase in period. The sulfur in gasoline standards require reductions from 300 parts per million to 30 parts per million of sulfur and begin in 2004 with a 3 year phase in period for Colorado and other Western states (most areas around the country are under a 2 year phase in requirement). When these new requirements are fully implemented (this will be 2030 due to fleet turnover), they will reduce NO_X emissions nationally by 74% or 2 million tons per year by 2020 and 3 million tons per year by 2030.

The maintenance plan includes a revised version of Colorado's Regulation No. 16, ''Street Sanding Emissions.'' The changes to this regulation were adopted by the Colorado Air Quality Control Commission with the PM_{10} maintenance plan on April 19, 2001. In addition to the existing portions of Regulation No. 16, these revisions require additional emission reductions in the Denver area. These reductions are: 30% emission reductions region-wide, excluding the Foothills Area which is subject to 20% emission reductions (the Foothills Area is specifically defined in Colorado Regulation No. 16), 50% emission reductions in the central Denver area (bounded by 38th Avenue, Federal Boulevard, Louisiana Avenue, and Downing Street), 54% reductions on I–25 between University and 6th Avenue; and 72% emission reductions in the central business district (bounded by Colfax Avenue, Broadway, 20th Street, Wynkoop and Speer Boulevard). The maintenance plan commits to implement these new requirements during the winter 2001/2002 season. It should be noted that a portion of these additional reductions in street sanding, de-icing and sweeping reflect a study contracted by the Denver Regional Air Quality Council (RAQC) that found increased benefits from de-icing and sweeping beyond what has historically been assumed for the Denver area (previous assumptions for Denver were consistent with recommendations from EPA guidelines). Based on the recommendations of the ''Emissions Benefit Study and Analysis,'' the RAQC decided to increase the emission reductions from street sweeping using mechanical or combination equipment to 37% and the percent emission reductions from vacuum and regenerative air equipment was increased to 61%. We have reviewed this study and found it to be technically accurate and therefore we also approve the resulting emission reduction credits assumed for these activities.

Colorado Regulation No. 1 ''Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides,'' will remain in the PM_{10} maintenance plan, with a few important changes that will bring further emission reductions. The revisions to Regulation No. 1 affect Public Service Company of Colorado's Cherokee, Arapahoe and Valmont Electric Generating Stations as well as the restrictions on the use of fuel oil as a backup fuel. One revision requires a 0.88 pounds per million British Thermal Unit (lb/mmBTU) SO_2 limit for the Cherokee boiler units 1 and 4 and Arapahoe boiler unit 4, based on a 30-day rolling average from November 1 to March 1 of each year. This limit is in addition to the existing 1.1 lb/mmBTU SO_2 limit with an additional 20% annual tonnage reduction that applies to Arapahoe boiler unit 4. Another revision to Regulation No. 1 is that the January 1, 2003 planned retirement of Arapahoe boiler units 1 and 2 is being made federally enforceable in order for those emission reductions to be used in the maintenance demonstration. In addition, a 30-day rolling average NO_X limit of 0.60 lb/mmBTU for Cherokee boiler unit 1 will be effective on January 1, 2005. These emission reduction credits are used accordingly in the maintenance demonstration for 2005 and beyond. Language was added to the specific sections for Cherokee, Arapahoe and Valmont to specify that the sources' continuous emissions monitoring equipment would be certified and operated in accordance with 40 CFR 60.13 for measuring opacity, SO_2, NO_X, and either O_2 or CO_2 on all the boiler units for these sources that are included in the regulation. Lastly, there is a revision to the fuel oil restrictions which ensures that these restrictions will continue to apply in the Denver PM_{10} area after the area is redesignated to attainment.

We note here that any source modeled at its maximum emission potential (PTE) was not required to have short-term emission limits in the maintenance plan. These sources cannot emit more than the maximum PTE which was used in the maintenance plan's modeling analysis absent a physical modification, or a change in operational method, either of which would require a permit revision. Any such permitting action would require an analysis of potential impacts on the Denver PM_{10} area. Please see Colorado's technical support documentation for more detailed information on each source.

In addition to these improved control measures which are being added to the PM_{10} maintenance plan, there are also certain control measures which are being removed from the control strategy with this maintenance plan. This is acceptable under the Calcagni Memorandum as long as the area can still demonstrate maintenance of the PM_{10} standard. Regulation No. 12, the ''Diesel Inspection/Maintenance Program'' will be removed from the PM_{10} SIP with the final approval of this maintenance plan. This program only achieved small emission reductions and therefore, Colorado demonstrated maintenance of the standard without taking credit for the regulation. Regulation No. 12 will remain as a state-

only requirement. Likewise, Regulation No. 13 ''Oxygenated Fuels Program'' will also be removed from the PM_{10} SIP with the approval of this plan due to its minor emission reductions for PM_{10}. This regulation is a part of the carbon monoxide maintenance plan, which we approved on December 14, 2001 (66 FR 64751).

As explained previously, the control strategy for the PM_{10} SIP included permits for seven stationary sources through our incorporation of these permits in the final approval of the SIP. These permits will be removed from the SIP with our final approval of this maintenance plan. We have evaluated this action and decided that the integrity of the control strategy will be preserved for the following reasons. All major emissions from Public Service Company's Cherokee Electric Generating Station, Trigen-Colorado Energy Corporation, Rocky Mountain Bottle Company and the Conoco Refinery are covered either by existing or new provisions in Regulation No. 1. As noted previously, Conoco will be subject to NSPS Subpart J limits on FCCU PM emissions once the federal consent decree is final. In addition, some of the sources, such as the Ultramar Diamond Shamrock refinery, were modeled at PTE, demonstrating that even at the sources' maximum emission rates, the Denver area would still maintain the PM_{10} standard. The permits for Purina Mills and Electron Corporation were included in the PM_{10} SIP because these sources had opted for synthetic minor permits during the development of the SIP. This was part of an agreement we made with Colorado in order for the Denver area to show attainment of the PM_{10} standard. Accordingly, Colorado modeled these sources at their actual emissions plus a growth factor for purposes of the nonattainment area SIP attainment demonstration. Although these sources have potentials to emit greater than 100 tons per year, they are no different than other synthetic minor sources in the Denver area that were modeled at actual emissions plus a growth factor in the original nonattainment area SIP, and there is no reason the permits for these sources need to be specifically incorporated by reference into the SIP. Thus, the maintenance plan removes the permits for Purina Mills and Electron Corporation from the SIP, and lists them as possible contingency measures should the NAAQS be violated.

Since no violations of the annual PM_{10} NAAQS have ever occurred in Denver and since the maintenance demonstration clearly shows maintenance of the 24-hour PM_{10} NAAQS in Denver through the year 2015, it is reasonable to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. Thus, EPA believes Colorado has adequately demonstrated that the Denver area will maintain the PM_{10} NAAQS for at least the next thirteen years.

c. Monitoring Network

Once a nonattainment area has been redesignated to attainment, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Colorado will continue to operate a core network of PM_{10} monitoring sites for the purposes of tracking PM_{10} in the Denver area. We approve these sites annually, and any future change would require discussion with us. In its July 30, 2001 submittal, Colorado committed to continue to operate the PM_{10} monitoring stations in Denver, in accordance with 40 CFR part 58.

d. Verification of Continued Attainment

Colorado's maintenance plan submittal must indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that the emissions projections made for the maintenance demonstration depend on assumptions of point and area source growth. In Chapter 4, section E of the maintenance plan, Colorado has committed to the continued operation of the ambient air monitoring network and to conduct an annual review of the network to verify that the system continues to meet EPA monitoring objectives and the area continues to attain the PM_{10} NAAQS.

In Chapter 4, section F.2, Colorado commits to track and document changes in new and modified stationary source permits. Also, in Chapter 4, sections E and F.2, the State commits to track mobile source emissions that contribute to PM_{10}, through the ongoing regional transportation planning process that is done by DRCOG. Since revisions to Denver's transportation improvement programs are prepared every two years, and must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the Denver Regional Air Quality Council (RAQC), the State's Air Pollution Control Division (APCD), the Air Quality Control Commission (AQCC), and EPA. If any significant changes appear, Colorado will perform studies to determine whether additional or re-sited monitors are necessary and whether the emission projections for future years are on target. If the future year projections appear to be lower than actual growth, Colorado will address the situation accordingly.

e. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The contingency plan must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation. The State should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

As stated in Chapter 4, section F of the maintenance plan, the contingency measures for the Denver area will be triggered by a violation of the PM_{10} NAAQS. (However, the maintenance plan does note that an exceedance of the PM_{10} NAAQS may initiate a voluntary, local process by the RAQC and APCD to identify and evaluate potential contingency measures.)

The RAQC, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the PM_{10} NAAQS has occurred. The subcommittee will present recommendations to the RAQC within 120 days of notification and the RAQC will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the RAQC, along with any other contingency measures that the AQCC believes may be appropriate to

effectively address the violation of the PM_{10} NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in Chapter 4, section F of the Denver PM_{10} maintenance plan include the control measures from the Part D nonattainment plan that are being removed with this maintenance plan as well as additional potential measures. The potential contingency measures which are the result of relaxations to the nonattainment plan control measures are: (1) The repeal of certain sections of Regulation No. 11 ''Motor Vehicle Emissions Inspection Program,'' (2) Regulation No. 12, ''Diesel Inspection/Maintenance Program,'' (3) Regulation No. 13 ''Oxygenated Fuels Program,'and (4) the stationary source permits that were incorporated into the Denver PM_{10} nonattainment SIP. The contingency plan also includes other potential contingency measures that would bring additional reductions in particulates to the Denver area. These measures are: (1) Increased street sweeping requirements, (2) expanded, mandatory use of alternative de-icers, (3) more stringent street sand specifications, (4) road paving requirements, (5) further woodburning restrictions, (6) re-establishing nonattainment area new source review permitting requirements for stationary sources, (7) NO_X RACT for stationary sources, (8) transportation control measures designed to reduce vehicle miles traveled, (9) an improved diesel inspection/maintenance program, (10) a retrofit program for heavy-duty diesel truck engines, and (11) other emission control measures appropriate for the area based on the consideration of cost-effectiveness, PM_{10} emission reduction potential, economic and social considerations, or other factors that the State deems appropriate. A more complete description of the triggering mechanism and these contingency measures can be found in Chapter 4, section F of the maintenance plan.

Based on the above, we find that the contingency measures provided in the Denver PM_{10} maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

f. Subsequent Maintenance Plan Revisions

As mentioned above, this maintenance plan uses credits from the EPA Tier II standards beginning in 2004, but this is based on adjustments made to the MOBILE5 model and not the new MOBILE6 emissions model since the latter had not been officially released when the maintenance plan was developed. Due to the fact that the Tier II assumptions using MOBILE5 may not be as accurate as they would be if MOBILE6 were used, Colorado has committed to revise the maintenance plan within one year of the later of the official release of: (1) MOBILE6, (2) the MOBILE6 particulate emissions replacement for PART5, or (3) the MOBILE6 guidance to enable Colorado to model its vehicle inspection/maintenance program for the model years after 1995.

In accordance with section 175A(b) of the Act, Colorado is required to submit a revision to the maintenance plan eight years after the redesignation of the Denver area to attainment for PM_{10}. This revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten year period. In the Denver redesignation request, Colorado committed to submit a revised maintenance plan eight years after the approval of the redesignation request and maintenance plan.

v. Meeting Applicable Requirements of Section 110 and Part D of the Act

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the Act. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Colorado SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. These requirements were met with the Colorado's March 30, 1995, November 17, 1995, and December 22, 1995 submittals for the Denver PM_{10} nonattainment area. We approved these submittals on September 23, 1996 (61 FR 49682) and April 17, 1997 (62 FR 18716).

b. Part D Requirements

Before a PM_{10} nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas, while subpart 4 of part D establishes specific requirements applicable to PM_{10} nonattainment areas. The General Preamble (see 57 FR 13530, *et seq.*) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6)(other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM_{10} NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our September 23, 1996 (61 FR 49682) and April 17, 1997 (62 FR 18716) approvals of the Denver PM_{10} SIP and the demonstration that the area is now attaining the NAAQS.

Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

We approved the requirements of the part D new source review permit program for Colorado on August 18, 1994 (59 FR 42506). Once the Denver area is redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the Act will apply. We must ensure that the State has made any needed modifications to its PSD regulations so

that Colorado's PSD regulations will apply in the Denver area after redesignation. Colorado's PSD regulations, which we approved as meeting all applicable Federal requirements (59 FR 42500, August 18, 1994), apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Denver area upon redesignation of the area to attainment.

C. Have the Transportation Conformity Requirements Been Met?

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–62196) and in the sections of the rule referenced above.

According to 40 CFR 93.118(b)(2), when a maintenance plan has been submitted, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and if an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

In the Denver PM_{10} nonattainment plan, Colorado had previously adopted a mobile source emissions budget for PM_{10} for the years 1998–2005 of 54 tons/day and an emissions budget for 2006 and beyond of 60 tons/day. A 119.4 tons/day NO_X emissions budget was established for analysis years 1998 and beyond. In the Denver PM_{10} maintenance plan, Colorado indicated that it would adopt a new mobile source emissions budget of 51 tons/day for PM_{10} and a 101 tons/day NO_X emissions budget for the years 2015 and beyond. Because future year projections in the maintenance plan were below the PM_{10} standard of 150 $\mu g/m^3$, under 40 CFR 93.124, Colorado was allowed to allocate the ''safety margin'' (the difference between the 24-hour PM_{10} standard and the concentration projected for the maintenance year 2015), to the NO_X emissions budget. This safety margin is 1.1 $\mu g/m^3$ and equates to 13 tons/day of NO_X. Therefore, the 101 tons/day NO_X emissions budget includes this ''safety margin'' of 13 tons/day. EPA's approval of the emissions budgets means that emissions projections (in a conformity analysis) for years 2015 and beyond must be less than or equal to 51 tons/day PM_{10} and 101 tons/day NO_X.

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund* vs. *the Environmental Protection Agency,* No. 97–1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in SIPs are adequate before they are used to determine the conformity of Transportation Improvement Programs or Long Range Transportation Plans. In response to the court decision, we are making most submitted SIP revisions containing a control strategy plan available for public comment and responding to these comments before announcing our adequacy determination. (We do not perform adequacy determinations for SIP revisions that only create new emission budgets for years in which an EPA-approved SIP already establishes a budget, because these new budgets cannot be used for conformity until they are approved by EPA.) We make SIP revisions available for comment by posting notification of their availability on our web site (currently, these notifications are posted at *www.epa.gov/oms/transp/conform/adequacy.htm).* The adequacy process is discussed in greater detail in a May 14, 1999 memorandum from Gay MacGregor entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' also available on our web site (www.epa.gov/oms/transp/traqconf.htm).

EPA reviewed the Denver PM_{10} budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. Notice of the availability of this SIP was posted on our adequacy web site on August 12, 2001, and a 30-day comment period for adequacy was provided following the procedures described in the May 14, 1999 Gay MacGregor memorandum referenced above. No comments were received. EPA's adequacy determination was made in a letter to the Colorado APCD on September 20, 2001, and was announced in the **Federal Register** on October 12, 2001 (66 FR 52129). As a result of this adequacy finding, the emissions budgets took effect for conformity determinations in the Denver metro area on October 29, 2001. However, we are not bound by that determination in acting on the maintenance plan.

D. Did Colorado Follow the Proper Procedures for Adopting This Action?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The Act also requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. 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. 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.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565, April 16, 1992). Our completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. We attempt to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the Act if a completeness determination is not made within six months after receipt of the submission.

Copies of the proposed changes were made available to the public and the AQCC held a public hearing on April 19, 2001 to entertain public comment on the redesignation request and maintenance plan for the Denver PM_{10} nonattainment area. Colorado did not receive any adverse comments and

therefore, the redesignation request and maintenance plan were subsequently adopted by the AQCC on April 19, 2001. The request was formally submitted to us for approval with a Governor's letter dated July 30, 2001. Supplementary documentation necessary for our completeness determination was submitted on September 5, 2001, September 10, 2001 and September 13, 2001. We reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that Colorado's submittal was administratively and technically complete under section 110(a)(2) of the CAA. Thus, pursuant to section 110(k)(1)(B) of the Act, the submittal was deemed administratively and technically complete with a September 24, 2001 letter from Jack McGraw, Acting Regional Administrator to Governor Bill Owens. Additional documentation was also submitted by Colorado on November 27, 2001. This information was necessary in order to complete our review of the maintenance plan and technical support information.

III. Background

To implement our 1987 revisions to the particulate matter NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM_{10} NAAQS would require revisions of the existing SIP. We identified the Denver area as a PM_{10} ''Group I'' area of concern, i.e., an area with a strong likelihood of violating the PM_{10} NAAQS and requiring a substantial SIP revision. The Denver area was among several Group I PM_{10} areas, all of which were designated and classified as moderate PM_{10} nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). See 56 FR 56694 at 56705–56706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM_{10} nonattainment areas were required to submit most elements of their PM_{10} SIPs. (See sections 172(c), 188, and 189 of the Act.) Some provisions, such as PM_{10} contingency measures required by section 172(c)(9) of the Act and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the Act must be met. We approved the PM_{10} contingency measures for the area on September 23, 1996 (61 FR 49682). We approved the PM_{10} SIP for Denver on April 17, 1997 (62 FR 18716) as meeting those moderate PM_{10} nonattainment plan requirements that were due to EPA on November 15, 1991. The PM_{10} SIP's transportation budgets required under the transportation conformity rule were approved on March 31, 1998 (63 FR 15294).

On July 30, 2001, the Governor of Colorado submitted a request to redesignate the Denver moderate PM_{10} nonattainment area to attainment for the 1987 PM_{10} NAAQS along with a maintenance plan for the area. On July 18, 1997, we promulgated new NAAQS for PM_{10} and $PM_{2.5}$. However, on May 18, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al.,* v. *United States Environmental Protection Agency* vacated the 1997 PM_{10} standard. Because of the Court ruling, we are continuing to implement the pre-existing PM_{10} standard, and are therefore approving redesignations to qualified PM_{10} nonattainment areas.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: May 14, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

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