

1. All periods of excess emissions are treated as violations of the emission limitation.

2. The rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes. There is no affirmative defense to actions for injunctive relief.

3. The rule includes criteria consistent with EPA's excess emissions policy that restrict the availability of affirmative defenses to malfunctions that are sudden, unavoidable, and unpredictable, and to excess emissions during startup and shutdown that could not have been avoided through careful planning and design. In all cases, all possible steps must have been taken to minimize excess emissions.

4. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

5. The defendant has the burden of proof of demonstrating it has met the criteria set out in Rule 310.

Rule 310.01 requires that the owner or operator of a source must notify ADEQ within 24 hours of learning that the source has emitted pollutants in excess of its limits. A detailed written report must be submitted within 72 hours of the initial notification. In order to qualify for an affirmative defense under Rule 310, the source must comply with the requirements of Rule 310.01.

### C. Public comment and final action.

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revisions to any state implementation plan. Each request for 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.

### III. 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. This proposed action merely approves 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it merely approves 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting

errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 4, 2001.

**Michael Schultz,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01-11916 Filed 5-10-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[CO-001-0054; FRL-6978-2]

### Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver 1-Hour Ozone Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 30, 2000, the Governor of Colorado submitted a request to redesignate the Denver-Boulder metropolitan (Denver) "transitional" ozone nonattainment area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). As part of this request, the Governor asked that EPA parallel process a proposed maintenance plan for the Denver area. In conjunction with the Governor's submittal, EPA is also proposing approval of revisions to Colorado's Regulation No. 3 "Air Contaminant Emissions Notices" and Colorado's Regulation No. 7 "Emissions of Volatile Organic Compounds" that were previously submitted by Governor

Roy Romer, for our approval, on August 8, 1996.

In this action, EPA is proposing approval and soliciting public comment on the Denver 1-hour ozone redesignation request, the State-proposed maintenance plan, and the revisions to Regulation No. 3 and Regulation No. 7.

**DATES:** Written comments must be received on or before June 11, 2001.

**ADDRESSES:** Written comments may be mailed to:

Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, 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 following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

Copies of the State documents relevant to this action are available for public inspection at:

Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, Telephone number: (303) 312-6479

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

**I. What is the purpose of this action?**

With this action, we are utilizing our parallel processing procedure for consideration of several revisions to the Colorado State Implementation Plan (SIP). Parallel processing allows EPA to propose rulemaking on a SIP revision(s), and solicit public comment, at the same time the State is processing the SIP revision(s). The Colorado Air Quality Control Commission (AQCC) adopted the proposed SIP revisions, with minor technical changes that we do not consider significant, on January 11, 2001. When the Governor submits the final revisions to us for approval, we will consider any comments received and proceed with a final rulemaking action. However, should the State substantially change any of the

proposed SIP revisions before the Governor submits the final versions to us, we will re-propose and again solicit public comment on these State amended SIP revisions before we take final rulemaking action. For further information regarding parallel processing, please see 40 CFR Part 51, Appendix V, section 2.3.1.

In this action, we are proposing approval of a change in the legal designation of the Denver area from nonattainment to attainment for the 1-hour ozone NAAQS (hereafter referred to as ozone NAAQS or ozone standard), we're proposing approval of the AQCC-adopted maintenance plan that is designed to keep the area in attainment for ozone for the next 13 years, and we're proposing approval of changes to AQCC Regulation No. 3 and AQCC Regulation No. 7. We also note that in his November 30, 2000, letter, the Governor asked that we parallel process a potential alternative provision for the maintenance plan that had been proposed by the Colorado Department of Transportation (CDOT). CDOT's alternative provision involved the conversion of the Santa Fe Boulevard High Occupancy Vehicle (HOV) lanes to general service lanes and the provision of funds to provide additional light rail transit cars to compensate for the loss of the HOV emission reductions. However, in a December 6, 2000, letter (that we received on December 19, 2000) from CDOT to the AQCC, CDOT withdrew its request for this alternative provision indicating that it could not guarantee light rail transit cars to replace the HOV lanes. Based on our understanding that this CDOT proposed alternative provision is moot, we are not proposing action on this alternative.

We originally designated the Denver area as nonattainment for ozone under the provisions of the 1977 CAA Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), EPA designated the Denver area as nonattainment for ozone because the area had been previously designated as nonattainment before November 15, 1990. The Denver area was classified under section 185A of the CAA as a "transitional" ozone nonattainment area as the area had not violated the ozone NAAQS in the years 1987, 1988, and 1989.<sup>1</sup>

<sup>1</sup>The CAA describes areas as "transitional" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines 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) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

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

Thus, before EPA can approve the redesignation request, EPA must find, among other things, that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. EPA notes there are no outstanding SIP elements necessary for the redesignation. However, the Governor previously requested approval of revisions to Regulation No. 3 and Regulation No. 7 such that rules applicable to the Denver ozone nonattainment area remain in effect after Denver is redesignated to attainment for the 1-hour ozone standard. Therefore, EPA is also proposing approval of the revisions to Regulation No. 3 and Regulation No. 7. These revisions are described below.

**II. What is the State's process to submit these materials to EPA?**

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements

violate the primary ozone NAAQS in the 3-year period of 1987 through 1989. Refer to section 185A of the CAA and the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990", 57 FR 13498, April 16, 1992. See specifically 57 FR 13523-27, April 16, 1992.

in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the final revisions being submitted by a State to us.

At the October 19, 2000, AQCC meeting, the Commission proposed for public comment the ozone redesignation request and maintenance plan. The AQCC held a public hearing on January 11, 2001, for considering public comment on the above SIP revisions. After accepting several minor technical corrections to the maintenance plan, the AQCC adopted the Denver 1-hour ozone redesignation request and maintenance plan on January 11, 2001.

The AQCC had previously held a public hearing on March 21, 1996, for the revisions to AQCC Regulation No. 3 "Air Contaminant Emissions Notices" (hereafter, Regulation No. 3) and AQCC Regulation No. 7 "Emissions of Volatile Organic Compounds" (hereafter, Regulation No. 7). The AQCC adopted the revisions to Regulation No. 3 and Regulation No. 7 directly after the hearing. These SIP revisions became State effective May 30, 1996, and were submitted by the Governor to us on August 8, 1996.

We have evaluated the Governor's prior submittal involving the revisions to Regulation No. 3 and Regulation No. 7 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's August 8, 1996, submittal of the revisions to Regulation No. 3 and Regulation No. 7 became complete on February 6, 1997.

### III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Brief History of the Denver Ozone Redesignation Request, Maintenance Plan, and Related SIP Submittals.

On August 8, 1996, the Governor of Colorado submitted a redesignation request and maintenance plan for the 1-hour ozone NAAQS for the Denver area along with revisions to Regulation No. 3 and Regulation No. 7 to ensure that rules applicable to the Denver nonattainment area would remain in

effect after Denver was redesignated to attainment. We did not proceed with any action on the Governor's submittal as the maintenance plan had both legal and technical problems that precluded our full approval.

On July 18, 1997, EPA promulgated the new 8-hour ozone NAAQS (see 62 FR 38856, July 18, 1997). In conjunction with that action, President Clinton issued a memorandum to the Administrator of the Environmental Protection Agency, on July 16, 1997, entitled "Implementation of Revised Air Quality Standards for Ozone and Particulate Matter." This memorandum directed the Administrator to review current ambient air quality data and to proceed with revoking the 1-hour ozone standard for all areas that were in attainment for the 1-hour standard. On June 5, 1998, we revoked the 1-hour ozone NAAQS for the Denver area (see 63 FR 31014) as the area had the necessary ambient air quality data showing that the area was in attainment for the 1-hour NAAQS. At that time, the August 8, 1996, Denver 1-hour ozone redesignation request and maintenance plan became moot and no further action was contemplated by either the State or us.

The new 8-hour ozone NAAQS was challenged by the American Trucking Association and others. In a May 14, 1999, opinion, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit stated that although EPA could designate areas as attainment or nonattainment for the 8-hour standard, we could not "enforce" (implement) the 8-hour standard. The result of this decision was that areas like Denver found themselves with the 1-hour ozone standard revoked and an 8-hour ozone standard that could not be enforced or implemented. We petitioned the U.S. Supreme Court to review several aspects of the D.C. Circuit's opinion.<sup>2</sup>

To continue to protect the public's health while waiting for the Supreme Court review, we reinstated the 1-hour ozone standard on July 20, 2000, (see 65 FR 45182) for all areas of the nation in which it had been previously revoked. This action had a delayed effective date for certain areas of the nation, such as Denver, to allow these areas to proceed with redesignation requests for the 1-hour standard. The 1-hour ozone

<sup>2</sup>The Supreme Court issued an opinion on February 27, 2001, that requires EPA to revisit its policy for implementing the new 8-hour ozone NAAQS and remands the case back to the Court of Appeals for the D.C. Circuit. There is still considerable uncertainty about when or whether we will be able to implement the new 8-hour ozone NAAQS. Thus, the Supreme Court's decision is largely irrelevant to this action.

NAAQS was reinstated for the Denver area on January 16, 2001, and at that time the area returned to its legal designation of nonattainment for the 1-hour ozone standard. Based on the above Federal actions, the Denver Regional Air Quality Council (RAQC) and State prepared a revised redesignation request and maintenance plan for the 1-hour ozone standard. The AQCC proposed these ozone SIP revisions for public comment at their meeting of October 19, 2000, and they were submitted by the Governor to us on November 30, 2000. The ozone SIP revisions we received from the Governor, and the revisions adopted by the AQCC on January 11, 2001, which made minor technical corrections to the Governor's November 30, 2000, submittal, form the basis for this proposed rule.

(b) Redesignation Criterion: The Area Must Have Attained The 1-Hour Ozone NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS.

As described in 40 CFR 50.9 and 40 CFR part 50, Appendix H, the national primary ambient air quality 1-hour ozone standard is 0.12 parts per million (235 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. Attainment of the ozone standard is not a momentary phenomenon based on short-term data. Each of the ozone ambient air quality monitors in the network are allowed to record three or fewer exceedances of the ozone standard over a continuous three-year period. 40 CFR 50.9 and 40 CFR part 50, Appendix H. If a single monitor in the ozone monitoring network records more than three expected exceedances (based on the expected exceedance calculation method in Appendix H) or actual exceedances of the standard over a three-year period then the area is in violation of the ozone NAAQS. In addition, EPA's interpretation of the CAA and EPA national policy<sup>3</sup> has been that an area seeking redesignation to attainment must continue to show attainment of the ozone NAAQS through the date that EPA promulgates the redesignation to attainment in the **Federal Register**.

The ozone redesignation request for the Denver area is based on an analysis of quality assured ambient air quality

<sup>3</sup>Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

monitoring data that are relevant to the redesignation request. The Denver area has not violated the 1-hour ozone standard since 1987. Ambient air quality monitoring data for consecutive calendar years 1997 through 1999 show an expected exceedance rate of less than 1.0 per year, per monitor, of the ozone NAAQS in the Denver nonattainment area. These data were collected and analyzed as required (see 40 CFR 50.9 and 40 CFR part 50, Appendix H) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. A preliminary analysis of data for 2000 also show continued attainment of the 1-hour ozone standard.

Further information on ozone monitoring is presented in Chapter 2, section B, "Attainment of the One-Hour Ozone NAAQS," of the State's maintenance plan and in the State's Technical Support Document (TSD). Exceedances of the 1-hour ozone standard have been measured at separate monitors in 1993, 1995, and 1998. We note, however, that the Denver area has not violated the ozone standard and continues to demonstrate attainment.

Because the Denver nonattainment area has complete quality-assured data showing no violations of the ozone NAAQS over the most recent consecutive three-calendar-year period, the Denver area has met the first requirement for redesignation; demonstration of attainment of the ozone NAAQS. EPA notes that the State of Colorado has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

(c) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA

Section 107(d)(3)(E)(v) requires that, to be redesignated to attainment, an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA due after the submission of a complete redesignation request need not be considered in evaluating the request.

#### 1. CAA Section 110 Requirements

On December 12, 1983, we approved revisions to Colorado's SIP as meeting the requirements of section 110(a)(2) of

the CAA (see 48 FR 55284). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1983 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 48 FR 55284. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

#### 2. Part D Requirements

Before the Denver transitional ozone nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 2 of part D contains specific provisions for transitional areas.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble (57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for transitional ozone areas (see 57 FR 13524–26).

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694 and 57 FR 13525). In the case of the Denver area, the due date was November 15, 1993. As the original Denver 1-hour ozone standard redesignation request and maintenance plan were not submitted by the Governor until August 8, 1996, (and the current revised redesignation request and maintenance plan were submitted on November 30, 2000) the General Preamble (57 FR 13525) provides our interpretation that the applicable requirements of CAA section 172 are 172(c)(1) (Reasonably available control technology (RACT)/Reasonably available control measures (RACM)), 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements)). It is our view that Part D requirements for an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to transitional ozone areas. See 57 FR 13525, April 16, 1992. It is also worth noting that EPA has

interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request for a transitional ozone nonattainment area 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 13525, 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.

Section 176 of the CAA contains requirements related to conformity. 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 our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

In that action, EPA explained that its decision was based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of an area, and are not required after redesignation of an area to attainment, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes

it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Further information regarding transportation conformity and mobile source emission budgets are found below in section IV "Transportation Conformity".

The applicable requirements of CAA section 172 are discussed below.

#### A. Section 172(c)(1)—RACT/RACM

To satisfy section 172(c)(1), transitional areas (section 185A) that continued to show no violations of the 1-hour ozone standard as of December 31, 1991, must ensure, at a minimum, that any deficiencies regarding enforceability of an existing rule are corrected. While section 185A of the CAA exempts transitional areas from all subpart 2 requirements until December 31, 1991, and that exemption continues until the area is redesignated to attainment (assuming the area satisfactorily demonstrated attainment by December 31, 1991), States should be aware that in order to be redesignated to attainment such areas must correct any RACT deficiencies regarding enforceability. See 57 FR 13525, April 16, 1992.

On September 27, 1989, and on August 30, 1990, the Governor submitted revisions to Regulation No. 7 that address RACT for sources of Volatile Organic Compounds (VOC) in ozone nonattainment areas, which includes Denver. We approved these revisions on June 29, 1995 (see 60 FR 28055).

#### B. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Denver nonattainment area. Our interpretation of the emission inventory requirement for transitional ozone nonattainment areas is detailed in the General Preamble (57 FR 13525, April 16, 1992). We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment.

On August 8, 1996, the Governor submitted the original Denver 1-hour ozone redesignation request and maintenance plan. This submittal contained a 1993 attainment year inventory for the Denver ozone nonattainment area. The Governor's parallel processing submittal of the revised redesignation request and maintenance plan, dated November 30, 2000, also contains this 1993 attainment year inventory. Once EPA receives the

Governor's final submittal, and we are able to approve the Denver ozone redesignation request and maintenance plan, this section 172(c)(3) requirement will be fulfilled.

#### C. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply if we approve the redesignation to attainment.

#### D. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble (57 FR 13525, April 16, 1992), transitional ozone nonattainment areas must meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Chapter 2, section B of the maintenance plan ("Attainment of the One-Hour Ozone NAAQS"), that ambient ozone monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Denver area. Air quality data through 1999 are included in Chapter 2, section B of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has also uploaded additional ambient ozone data through July 31, 2000. The data in AIRS indicate that the Denver area has shown, and continues to show, attainment of the 1-hour ozone NAAQS. Information concerning ozone monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Denver ozone network remains adequate. Finally, in Chapter 3, section E, ("Monitoring Network / Verification of Continued Attainment") of the maintenance plan, the State commits to the continued operation of the ozone monitoring network, according to all applicable Federal regulations and guidelines, even after the Denver area is redesignated to

attainment for the 1-hour ozone NAAQS.

(d) Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA

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).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of SIP revisions required under the 1990 amendments to the CAA, and our proposed approval of the maintenance plan, we have determined that Colorado will have a fully approved ozone SIP under section 110(k) for the Denver ozone nonattainment area if we approve the maintenance plan.

(e) Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

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 (Denver ozone revision as approved on December 12, 1983, see 48 FR 55284), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The emissions reductions of ozone precursors (VOCs and Nitrogen Oxides or NO<sub>x</sub>) that have occurred over the past several years were achieved primarily through Federal emission control measures, CAA-required improvements to the State vehicle inspection and maintenance (I/M) program, AQCC Regulations No. 3 and No. 6, and AQCC Regulation No. 7.

The Federal Motor Vehicle Control Program (FMVCP) achieved VOC and NO<sub>x</sub> emission reductions. 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. For example, EPA promulgated lower hydrocarbon (HC) (of which VOCs are a portion) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-

duty vehicles and light-duty trucks), in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

Colorado's Automobile Inspection and Readjustment (AIR) program is fully described in AQCC Regulation No. 11 ("Motor Vehicle Emissions Inspection Program") and has been applicable in the Denver area since 1981. The AIR program works to reduce VOC and NO<sub>x</sub> emissions from gasoline-powered motor vehicles by requiring them to meet emission standards through periodic tailpipe tests, maintenance, and specific repairs. The AIR program was updated in 1994 to meet the requirements of the CAA amendments of 1990, and a more stringent and effective "enhanced" inspection and maintenance program began in the Denver area in 1995. The enhanced program uses a loaded-mode dynamometer test called the "I/M 240" for 1982 and newer vehicles and an idle test for 1981 and older vehicles and heavy trucks.

The State's permit rules for stationary sources, AQCC Regulation No. 3 ("Air Contaminant Emissions Notices") and AQCC Regulation No. 6 ("Standards of Performance for New Stationary Sources") control emissions from industrial facilities and cap VOC and NO<sub>x</sub> emissions from new or modified major stationary sources.

Finally, the State has Regulation No. 7 ("Emissions of Volatile Organic Compounds") which contains RACT requirements for commercial and industrial sources of VOCs. As noted above, the State submitted substantial revisions to Regulation No. 7 in 1989 and 1990 that we approved on May 30, 1995 (see 60 FR 28055).

We have evaluated the various State and Federal control measures, the 1993 attainment year emission inventory, and the projected emissions described below, and have concluded that the improvement in air quality in the Denver nonattainment area has resulted from emission reductions that are permanent and enforceable.

(f) Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for

areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992.

In this **Federal Register** action, we are proposing approval of the State of Colorado's maintenance plan for the Denver ozone nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's November 30, 2000, submittal, is provided as follows:

#### *1. Emissions Inventories—Attainment Year and Projections*

Our interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for the 1-hour ozone NAAQS may demonstrate future maintenance of the ozone NAAQS either by showing that future VOC and NO<sub>x</sub> emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Denver area, the State selected the emissions inventory approach for

demonstrating maintenance of the ozone NAAQS.

The maintenance plan that the Governor submitted on November 30, 2000, included comprehensive inventories of VOC and NO<sub>x</sub> emissions for the Denver area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, on-road mobile sources, and biogenics. The State selected 1993 as the year from which to develop the attainment year inventory and included projections for 2006 and 2013. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan in Chapter 3, section B, ("Emission Inventories"), Appendix A, ("Emission Inventories") of the maintenance plan, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance.

#### *A. Emission Inventory Corrections and Changes; As Adopted on January 11, 2001*

At the January 11, 2001, AQCC public hearing for the Denver 1-hour ozone redesignation request and maintenance plan, the RAQC and State brought forward several minor corrections and changes for consideration by the public and AQCC. These minor corrections/changes were as follows:

1. In preparing the emission inventories, the State used mobile source gridded VMT data that had been previously developed for the Denver area's carbon monoxide redesignation request and maintenance plan. The gridded VMT data, that were originally prepared for the Urban Airshed Model (UAM), covered a larger area than the Denver 1-hour ozone nonattainment area. The ozone maintenance plan inadvertently included calculated mobile source emissions for the larger UAM modeling domain area rather than just the ozone attainment/maintenance area. The emission inventories are to be calculated to be consistent with the original nonattainment area and the attainment/maintenance area boundaries. The mobile source emission figures for 1993, 2006, and 2013 were all corrected to reflect the appropriate area in both the maintenance plan and TSD.

2. In reference to the above, the motor vehicle VOC and NO<sub>x</sub> conformity emission budgets were corrected to reflect the emissions only for the ozone attainment/maintenance area boundaries. The corrections were done for both the maintenance plan and TSD.

3. The Denver International Airport (DIA) provided the RAQC and State

updated emission estimates that reflected the projected expansion and associated growth of aircraft operations and ground support equipment at DIA. These revised estimates were incorporated into both the maintenance plan and TSD.

4. An error was discovered in the non-road emissions category. In reviewing VOC emissions that were estimated for farm equipment a figure of 9.0 tons per day of VOCs had been used in the 1993 attainment year inventory. This figure actually should have been 0.9 tons per day of VOCs. This correction was

reflected in both the maintenance plan and TSD.

Summary emission figures, that include the corrections adopted at the AQCC January 11, 2001 public hearing, from the 1993 attainment year and the projected years are provided in Table III.-1 and Table III.-2 below.

TABLE III.-1—SUMMARY OF VOC EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 <sup>1</sup>	2006	Rev. 2006 <sup>1</sup>	2013	Rev. 2013 <sup>1</sup>
Point Sources .....	46	46	52	52	56	56
Area Sources .....	74	74	73	73	80	80
Non-Road Mobile Sources .....	67	58	40	39	40	38
On-Road Mobile Sources .....	124	119	89	84	77	74
Biogenics .....	211	211	211	211	211	211
<b>Total .....</b>	<b>522</b>	<b>507</b>	<b>456</b>	<b>460</b>	<b>464</b>	<b>459</b>

<sup>1</sup> These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

TABLE III.-2—SUMMARY OF NO<sub>x</sub> EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 <sup>1</sup>	2006	Rev. 2006 <sup>1</sup>	2013	2013 <sup>1</sup>
Point Sources .....	122	122	123	123	126	126
Area Sources .....	7	7	10	10	11	11
Non-Road Mobile Sources .....	64	65	51	57	40	50
On-Road Mobile Sources .....	139	134	121	115	123	117
Biogenics .....	4	4	4	4	4	4
<b>Total .....</b>	<b>336</b>	<b>332</b>	<b>309</b>	<b>309</b>	<b>304</b>	<b>308</b>

<sup>1</sup> These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

## 2. Demonstration of Maintenance— Projected Inventories

As noted above, total VOC and NO<sub>x</sub> emissions were projected by the State for 2006 and 2013. The years 2006 and 2013 were selected by the State, with EPA's concurrence, due to the immediate availability of transportation data sets from the Denver Regional Council Of Governments (DRCOG) from the work performed on the Denver carbon monoxide (CO) redesignation request and maintenance plan.

The Denver CO redesignation request and maintenance plan were submitted to us on May 10, 2000. This maintenance plan used the latest revised transportation data sets that were developed by DRCOG for the State to model the mobile source emissions. In addition, the CO maintenance plan incorporated changes to AQCC Regulation No. 11 that would initiate a Remote Sensing Device (RSD) program in 2002 and affect the cutpoints for the enhanced I/M program. Both of these I/M program revisions would also directly affect emission reductions for the ozone maintenance plan.

The RSD program is designed to evaluate 20% of the fleet in 2003, 40% of the fleet in 2004, 60% of the fleet in

2005, and 80% of the fleet in 2006. The RSD program will continue through 2013. In conjunction with the new RSD program, Regulation No. 11's enhanced I/M program will continue to apply to evaluate the remainder of the fleet and those vehicles that did not pass evaluation by the RSD program. Also, the enhanced I/M cutpoints will be tightened from the current levels of 2.0 grams per mile for hydrocarbons (HC) and 4.0 grams per mile for NO<sub>x</sub> to 0.6 grams per mile HC and 1.5 grams per mile NO<sub>x</sub> in 2006 and will continue through 2013. We have reviewed these State-adopted changes to Regulation No. 11 and will be proposing approval of them in a separate rulemaking action for the Denver CO redesignation request and maintenance plan. We note that the State has properly accounted for these Regulation No. 11 revisions in the projected emission inventories for 2006 and 2013 and is able to demonstrate maintenance of the 1-hour ozone standard. In the event that we are unable to approve the Regulation No. 11 revisions that were submitted by the Governor on May 10, 2000, this would not have an adverse impact on the Denver ozone maintenance plan as the current I/M program would continue

and would provide greater emission reductions than the State has projected for the amended version of Regulation No. 11. In either scenario, the maintenance demonstration would still be valid.

For the ozone maintenance plan, the 1993 attainment year inventory and the projected 2006 and 2013 inventories were all prepared in accordance with EPA guidance. As stated in the maintenance plan, the projected emission inventories show a steady downward trend in both VOC and NO<sub>x</sub> emissions. This is due mainly to more stringent motor vehicle tailpipe emission standards and additional Federal rule requirements for non-road sources of emissions. Because of this steady downward trend in emissions and because future year emissions are projected to be considerably below the 1993 attainment year levels, the State expects there will be no increases in emissions in the years between the present and 2013 that will jeopardize the demonstration of maintenance. Based on the information in the maintenance plan and the State's TSD, we agree with this conclusion.

Therefore, as the projected 2006 and 2013 inventories show that VOC and

NO<sub>x</sub> emissions are not estimated to exceed the 1993 attainment levels during the time period from the present through 2013, the Denver area has satisfactorily demonstrated maintenance of the 1-hour ozone NAAQS.

### 3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the 1-hour ozone NAAQS in the Denver area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the Denver maintenance plan. In Chapter 2, section B and Chapter 3, section E the State commits to continue the operation of the ozone monitors in the Denver area and to annually review this monitoring network and make changes as appropriate.

Also, in Chapter 3, section F, ("Contingency Provisions"), the State commits to track mobile sources' VOC and NO<sub>x</sub> precursor emissions (which are the largest component of the inventories) 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 progress towards meeting 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 RAQC, the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are proposing approval of these commitments as satisfying the relevant requirements. We note that a final rulemaking approval will render the State's commitments federally enforceable.

### 4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in Chapter 3, section F, ("Contingency Provisions") of the maintenance plan, the contingency measures for the Denver area will be triggered by a violation of the 1-hour ozone NAAQS. (However, the maintenance plan does note that an exceedance of the 1-hour ozone 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 1-hour ozone 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 1-hour ozone 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 3, section F of the Denver ozone maintenance plan include summertime gasoline Reid Vapor Pressure (RVP) reduction, reinstatement of the enhanced I/M program in effect before January 10, 2000, enhanced I/M program changes and additions that may involve changing cutpoints and adding an evaporative controls check, reinstatement of the NSR program, restrictions on consumer and commercial coatings, restrictions on architectural surface coatings, restrictions on lawn and garden equipment use, and NO<sub>x</sub> RACT for major sources. A more complete description of the triggering mechanism and these contingency measures can be found in Chapter 3, section F of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's Denver ozone maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

### 5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in Chapter 3, section G, ("Subsequent Maintenance Plan Revisions") of the Denver ozone maintenance plan.

## IV. EPA's Evaluation of the Transportation Conformity Requirements

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 budgets 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 62193-96) and in the sections of the rule referenced above.

The maintenance plan (as updated on January 11, 2001) defines the motor vehicle emissions budgets in the Denver ozone attainment/maintenance area as 119 tons per day for VOCs and 134 tons per day for NO<sub>x</sub> for all years 2002 and beyond. These figures reflect technical corrections to those of 124 tons per day for VOCs and 139 tons per day for NO<sub>x</sub> that were previously submitted by the Governor on November 30, 2000. These budgets are equal to the attainment year (1993) mobile source emissions inventory for these pollutants and use some of the available safety margin in the years 2002 to 2013. The use of the safety margin is permitted by the conformity rule. See 40 CFR 93.124(a).

The State used specific inventory values for the years 2006 and 2013 to calculate and use some of the available safety margin in those years. As revised during the January 11, 2001, public hearing, in 2006 the total emissions of VOCs and NO<sub>x</sub> are lower than the 1993 attainment year emissions inventory by 47 (was 56) tons per day and 23 (was 27) tons per day respectively. For 2006, the State added the mobile sources portion of the safety margin (35 tons per day for VOCs and 19 tons per day for NO<sub>x</sub>) to the 2006 mobile sources emission inventories to arrive at the final budgets of 119 tons per day for VOCs and 134 tons per day for NO<sub>x</sub>. For 2013, the State similarly allocated the safety margin to arrive at the same budgets. Although the maintenance plan does not specifically address the inventories for the other years between 2002 and 2013, the maintenance plan defines the same budgets for 2002 and all years beyond, thus evidencing the intent to apply some portion of the available safety margin in 2002 to arrive at these same budgets. We believe this is

acceptable under the circumstances because we would not expect total emissions from sources other than on-road mobile sources to exceed their 1993 levels in the year 2002 or any other year before 2013. Therefore, in view of our analysis, we are proposing to approve these 1-hour ozone NAAQS VOC and NO<sub>x</sub> budgets for the Denver area.

#### **V. EPA's Evaluation of the Regulation No. 3 Revisions**

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 3 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Regulation No. 3, Part B, Section III.D.1.f., previously exempted gasoline stations, located in ozone attainment areas, from construction permit requirements. The revision to Regulation No. 3 that the Governor submitted on August 8, 1996, exempts gasoline stations located in ozone attainment areas from construction permit requirements, with the exception of those gasoline stations located in the Denver Metro ozone attainment maintenance area. In other words, this revision ensures that gasoline stations will remain subject to Regulation No. 3 requirements after Denver's redesignation to attainment.

We concur with this revision to Regulation No. 3 and we are proposing approval of this change.

#### **VI. EPA's Evaluation of the Regulation No. 7 Revisions**

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 7 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Section I.A.1 of Regulation No. 7, "Applicability", previously read "The provisions of this regulation shall apply only to ozone nonattainment areas with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide." This was revised in the Governor's August 8, 1996, submittal to read "The provisions of this regulation shall apply only to ozone nonattainment areas and the Denver Metro Attainment Maintenance Area with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide."

We concur with this revision to Regulation No. 7 and we are proposing approval of this change. We note that additional revisions to Regulation No. 7 were also submitted with the Governor's

August 8, 1996, submittal and included the addition of paragraphs A.2., A.3., and A.4. to create "de minimus" exemptions. We are not taking any action on these revisions and will not consider them with our proposed approval of the Governor's November 30, 2000, submittal.

#### **VII. EPA's Evaluation of the Request for Revision to 40 CFR 80.27(a)(2) for RVP**

Since 1991, gasoline sold in the Denver area during the summer ozone season (June 1st to September 15th for gasoline RVP) has been subject to a national Reid Vapor Pressure (RVP) limit of 7.8 psi (8.8 psi for ethanol-blended fuels) in order to reduce fuel volatility. Since the Denver area has not violated the 1-hour ozone standard since the late 1980s, the State has previously requested, and EPA has granted, waivers to allow a 9.0 psi RVP (10.0 psi for ethanol-blends) gasoline in the Denver area instead of the more stringent 7.8 psi RVP limit.

The maintenance plan that was submitted by the Governor on November 30, 2000, incorporates a gasoline RVP limit of 9.0 psi in the maintenance demonstration. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance time period of 1993 through 2013 with this 9.0 psi limit, the State of Colorado has requested that the 9.0 psi summertime RVP limit (10.0 psi for ethanol-blends) be made permanent for the Denver attainment/maintenance area once EPA approves the redesignation request and maintenance plan. We believe this change would be appropriate. However, separate rulemaking through our Headquarters office is necessary to revise the RVP requirements for Colorado as specified in 40 CFR 80.27(a)(2). We anticipate that our Headquarters office will pursue this rulemaking action if and when we fully approve the redesignation request and maintenance plan.

#### **VIII. Proposed Rulemaking Action and Request for Public Comment**

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. As stated above, we are proposing approval of the Governor's November 30, 2000, request to redesignate the Denver 1-hour ozone NAAQS nonattainment area to attainment, the maintenance plan and the minor technical changes as adopted by the AQCC on January 11, 2001, and the August 8, 1996, revisions to Regulation No. 3 and Regulation No. 7. Send your comments in duplicate to the address listed at the front of this proposed rule. We will consider your

comments in deciding our final action if your letter is received before June 11, 2001.

#### **Administrative Requirements**

##### *(a) Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### *(b) Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### *(c) Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a

regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely proposes approval of 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. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*(d) Executive Order 13175*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

*(e) Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA U.S.A.*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that the proposed approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

*(f) Unfunded Mandates*

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

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: April 27, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 01-11915 Filed 5-10-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[TN-T5-2001-03; FRL-6977-7]

**Clean Air Act Proposed Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; reopening of the public comment period.

**SUMMARY:** In response to a request from Mr. George Hays as counsel for the National Parks Conservation Association, EPA is reopening the comment period for a proposed rule published on March 20, 2001, in the **Federal Register** (66 FR 15680) for full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

**DATES:** Written comments must be received by EPA on or before June 11, 2001.

**ADDRESSES:** Comments should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8909.

**FOR FURTHER INFORMATION CONTACT:** Kim Pierce, EPA Region 4, at (404) 562-9124 or [pierce.kim@epa.gov](mailto:pierce.kim@epa.gov).