

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(f) For purposes of calculating the royalty rates for secondary transmission of digital signals of broadcast stations by satellite carriers—

(1) In the case of digital multicasting, the rates in paragraphs (a) through (e) of this section apply to each digital stream that a satellite carrier or distributor retransmits pursuant to section 119; *provided*, however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream; and

(2) Satellite carriers and distributors are not required to pay a section 119 royalty for the retransmission of a digital signal to a subscriber who resides in a community where that signal is “significantly viewed,” within the meaning of 17 U.S.C. 119(a)(3) and (b)(1), as amended.

Dated: May 12, 2005

**Tanya Sandros,**

*Associate General Counsel.*

[FR Doc. 05–9804 Filed 5–16–05; 8:45 am]

BILLING CODE 1410–33–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0004; FRL–7912–7]

### Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Greeley Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Colorado. On June 20, 2003, the Governor of Colorado submitted a revised maintenance plan for the Greeley carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains transportation conformity budgets for 2005 through 2009, 2010 through 2014, and 2015 and beyond. In addition, the Governor submitted revisions to Colorado’s Regulation No. 11 “Motor Vehicle Emissions Inspection Program” and revisions to Colorado’s Regulation No. 13 “Oxygenated Fuels Program.” In this action, EPA is proposing approval of the Greeley CO revised maintenance plan, the transportation conformity budgets, and the revisions to Regulation No. 11 and Regulation No. 13. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before June 16, 2005.

**ADDRESSES:** Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0004, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Website: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA’s electronic public docket and comment system for regional actions, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental

Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to RME Docket Number R08–OAR–2004–CO–0004. EPA’s policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. EPA’s Regional Materials in EDOCKET and Federal [regulations.gov](http://regulations.gov) Web site are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some

information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6479, and e-mail at: [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *NAAQS* mean National Ambient Air Quality Standard.
- (iv) The initials *SIP* mean or refer to State Implementation Plan.
- (v) The word *State* means the State of Colorado, unless the context indicates otherwise.

## I. General Information

### A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- (a) Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- (b) Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- (c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- (d) Describe any assumptions and provide any technical information and/or data that you used.
- (e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- (f) Provide specific examples to illustrate your concerns, and suggest alternatives.
- (g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- (h) Make sure to submit your comments by the comment period deadline identified.

## II. What Is the Purpose of This Action?

In this action, we are proposing approval of a revised maintenance plan for the Greeley attainment/maintenance area (hereafter, Greeley area) that is designed to keep the area in attainment for CO through 2015, we're proposing approval of transportation conformity motor vehicle emissions budgets (MVEB) for the area, we're proposing approval of changes to the State's Regulation No. 11 that will eliminate

the requirement to implement motor vehicle emissions inspections in the Greeley area, and we're proposing approval of changes to the State's Regulation No. 13 that will eliminate the requirement to implement a wintertime oxygenated fuels program in the Greeley area. We approved the original CO redesignation to attainment and maintenance plan for the Greeley area on March 10, 1999 (*see* 64 FR 11775).

The original Greeley CO maintenance plan that we approved on March 10, 1999 (hereafter March 10, 1999 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and Local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the original March 10, 1999 maintenance plan, the State followed our October 6, 1995 policy entitled, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" (hereafter October 6, 1995 policy). Our October 6, 1995 policy indicated that nonclassifiable CO nonattainment areas, such as the Greeley area, that were seeking redesignation to attainment, need only prepare an attainment year emissions inventory and continue to implement the prior nonattainment control measures. However, based on the State's decision to pursue the elimination of the motor vehicle basic Inspection and Maintenance (I/M) program and the oxygenated fuels program control measures from the March 10, 1999, maintenance plan, our October 6, 1995 policy no longer applies. Instead, the relevant EPA policy we use in considering the Governor's June 20, 2003 revised maintenance plan is our September 4, 1992 policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (hereafter, September 4, 1992 policy).

The attainment year emission inventory provided in the March 10, 1999 maintenance plan was for 1995. For the revised maintenance plan, the State prepared a new attainment year inventory for 1992, projected emission inventories for 1998, 2005, 2010, and 2015 (eliminating any emission reductions benefits from the prior basic I/M and oxygenated fuels programs beginning in 2004), and calculated all the mobile sources CO emissions using MOBILE6.2. In addition, the State prepared an emissions analysis for 2004 that evaluated the elimination of the basic I/M and oxygenated fuels programs in that year. The State calculated a CO MVEB for 2005 through 2009 and applied a selected amount of the available safety margin to the 2005 through 2009 transportation conformity MVEB. The State calculated a CO MVEB for 2010 through 2014 and applied a selected amount of the available safety margin to the 2010 through 2014 transportation conformity MVEB. The State calculated a CO MVEB for 2015 and beyond and also applied a selected amount of the available safety margin to the 2015 and beyond transportation conformity MVEB. We have determined that all the revisions noted above are Federally-approvable, as described further below.

**III. 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 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 revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Greeley revised CO maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13 on December 19, 2002. The AQCC adopted the revised maintenance plan, and revisions to Regulation No. 11 and Regulation No. 13 directly after the hearing. These SIP revisions became State effective March 2, 2003, and were submitted by the Governor to us on June 20, 2003.

We have evaluated the Governor's submittal and have concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's submittal was administratively and technically complete. Our completeness determination was sent on September 19, 2003, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

**IV. EPA's Evaluation of the Greeley Revised Maintenance Plan**

EPA has reviewed the State's revised maintenance plan for the Greeley area and believes that approval is warranted. The following are the key aspects of this revision along with our evaluation of each:

(a) The State has air quality data that show continuous attainment of the CO NAAQS.

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8

continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The March 10, 1999 maintenance plan relied on ambient air quality data from 1988 through 1997. In our consideration of the revised Greeley CO maintenance plan, submitted by the Governor on June 20, 2003, we reviewed ambient air quality data from 1988 through 2004. The Greeley area shows continuous attainment of the CO NAAQS from 1988 to present. All of the above-referenced air quality data are archived in our Air Quality System (AQS).

(b) Using the MOBILE6.2 emission factor model, the State provided a revised attainment year inventory (1992), new projected years (1998, 2005, 2010, and 2015) inventories and an analysis for 2004.

The revised maintenance plan that the Governor submitted on June 20, 2003, includes comprehensive inventories of CO emissions for the Greeley area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the new 1992 attainment year inventory, and the new 1998, 2005, 2010, and 2015 projected inventories, are documented in the maintenance plan in section 2 entitled "Emission Inventories and Maintenance Demonstration," and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1992 attainment year and the projected years are provided in Table IV.-1 below.

TABLE IV-1.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR THE GREELEY AREA

| Source Category | 1992  | 1998  | 2005  | 2010  | 2015  |
|-----------------|-------|-------|-------|-------|-------|
| Point* .....    | 1.850 | 1.838 | 2.101 | 2.287 | 2.474 |
| Area* .....     | 9.159 | 9.779 | 3.181 | 3.244 | 3.306 |
| Non-Road* ..... | 5.437 | 6.127 | 6.900 | 7.696 | 8.501 |
| Subtotal .....  | 16.4  | 17.7  | 12.2  | 13.2  | 14.3  |
| On-Road .....   | 59.3  | 47.7  | 56.5  | 47.3  | 46.1  |
| Total .....     | 75.7  | 65.4  | 68.7  | 60.5  | 60.4  |

\*The State reported these categories with three decimal places to provide a better representation of the smaller source categories.

In addition to the above data, we note that Table 1 of the maintenance plan, entitled "1992-2015 Greeley Attainment/Maintenance Area Carbon

Monoxide Emission Inventories," includes inventory analysis data for 2004. With the elimination of the basic I/M program and oxygenated fuels

program in 2004, mobile source emissions are 59.0 tons per day and total CO emissions are 71.0 tons per

day, which is below the attainment year level of emissions of 75.7 tons per day.

The revised mobile source emissions show the largest change from the March 10, 1999 maintenance plan and this is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see "Mobile Source Emission Inventories," page 6) and on a compact disk we prepared (a copy is available upon request). The State's TSD information is also available on a compact disk that may be requested from the State or it can be downloaded directly from the State's Web site at <http://apcd.state.co.us/documents/techdocs.html>. The TSD compact disk contains much of the modeling data, input-output files, fleet makeup, MOBILE6.2 input parameters, and other information, and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates that were provided to the State from the North Front Range Transportation and Air Quality Planning Council (NFRTAQPC), which is the metropolitan planning organization (MPO) for the Greeley area. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the March 10, 1999 Greeley maintenance plan. As described above, the State prepared, and we approved, the March 10, 1999 Greeley maintenance plan based on our October 6, 1995 policy. Because the State is seeking removal of control measures (the basic I/M program and the oxygenated fuels program) from the maintenance plan, the October 6, 1995 policy no longer applies, and the State is required to submit a full maintenance plan, including motor vehicle emissions budgets for transportation conformity.

The State has prepared a full maintenance demonstration, that includes a new attainment year inventory, for 1992, interim projected emission inventories for 1998, 2005, 2010, and a final maintenance year emission inventory for 2015.<sup>1</sup> As described below, the revised Greeley maintenance plan successfully demonstrates maintenance of the CO

NAAQS from 1992 to 2015, despite the elimination of both the basic I/M program and the oxygenated gasoline program.

In the revised maintenance plan, the State updated all emission source categories (point, area, non-road, and mobile) using the latest versions of applicable models (including MOBILE6.2). Other revisions involved transportation data sets, emissions data, emission factors, population figures and other demographic information. In addition, the revised maintenance plan addresses the requirements for transportation conformity, which are described further below.

As discussed above, the State prepared a new attainment year inventory, for 1992, and new emission inventories for the years 1998, 2005, 2010, and 2015. The results of these calculations are presented in Table 1 and Table 2, both entitled "1992–2015 Greeley Attainment/Maintenance Area Carbon Monoxide Emission Inventories (tons/day)," of the revised Greeley maintenance plan and are also summarized in our Table IV–1 above. The State has demonstrated using MOBILE6.2, that mobile source emissions continuously decline from 1992 to 2015 and that the total CO emissions from all source categories, projected for years 1998, 2005, 2010, and 2015, as well as for 2004, are all below the 1992 attainment year level of CO emissions. Therefore, we are proposing approval of the revised maintenance plan as it continues to demonstrate maintenance of the CO NAAQS from 1992 to 2015, while removing from the Federally-enforceable SIP both the basic I/M program (of Regulation No. 11) and the oxygenated fuels program (Regulation No. 13) for Weld County and the Greeley CO maintenance area.

(d) Monitoring Network and Verification of Continued Attainment. Continued attainment of the CO NAAQS in the Greeley area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section 6. "Monitoring Network/Verification of Continued Attainment" of the revised Greeley CO maintenance plan. In section 6., the State commits to continue the operation of the CO monitor in the Greeley area and to annually review this monitoring network and make changes as appropriate to meet the requirements of 40 CFR part 58.

Also, in section 7.A, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation

planning process that is done by NFRTAQPC. Since regular revisions to Greeley's transportation improvement programs 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 revised maintenance plan. This regional transportation process is conducted by NFRTAQPC in coordination with 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 action would render the State's commitments federally enforceable. These commitments are also the same as we approved in the original maintenance plan.

(e) 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 section 7 of the revised maintenance plan, the contingency measures for the Greeley area will be triggered by a violation of the CO NAAQS. (However, the maintenance plan does note that an exceedance of the CO NAAQS may initiate a voluntary, local process by the City of Greeley, NFRTAQPC and APCD to identify and evaluate potential contingency measures.)

The City of Greeley and NFRTAQPC, in conjunction 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 CO NAAQS has occurred. The subcommittee will present recommendations within 120 days of notification and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the recommended contingency measures, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the CO 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 section 7.C of the revised Greeley CO maintenance plan include; (1) a basic vehicle inspection

<sup>1</sup> As noted above, the State used the MOBILE6.2 model to revise the Greeley CO maintenance plan. While under certain circumstances, our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without revising the entire SIP or completing additional modeling, those circumstances are not present in this case.

and maintenance program as described in AQCC Regulation No. 11 as it existed prior to the modifications adopted by the AQCC on December 19, 2002, with the addition of any on-board diagnostics components as required by Federal law and, (2) a 2.7% oxygenated fuels program as set forth in AQCC Regulation No. 13 prior to the modifications made on December 19, 2002.

Based on the above, we find that the contingency measures provided in the State's revised Greeley CO maintenance plan are sufficient to meet the requirements of section 175A(d) of the CAA and we are proposing approval of them.

(f) Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the CAA, Colorado committed to submit a revised maintenance plan eight years after our approval of the original redesignation. This provision for revising the maintenance plan is contained in section 8 of the revised Greeley CO maintenance plan. In section 8, the State commits to submit a revised maintenance plan eight years after the approval of the May 10, 1999, maintenance plan.

Based on our review of the components of the revised Greeley CO maintenance plan, as discussed in our items IV.(a) through IV.(f) above, we have concluded that the State has met the necessary requirements in order for us to propose approval of the revised Greeley CO maintenance plan.

**V. EPA's Evaluation of the Transportation Conformity Requirements**

As we noted above, in order for the State to remove the basic I/M program and oxygenated gasoline programs from the Federal SIP for the Greeley area, a full maintenance demonstration was required. With the development of the full maintenance demonstration, which included the necessary projected emission inventories for future years, the Greeley area then had to address the transportation conformity requirements of section 176 of the CAA and the relevant sections of our conformity regulation (see 40 CFR 93.118 and 93.124).

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.

Section 5 of the maintenance plan defines the CO motor vehicle emissions budgets in the Greeley CO attainment/maintenance area as 63 tons per day

(tpd) for 2005 through 2009, 62 tpd for 2010 through 2014, and 60 tpd for 2015 and beyond.

The transportation conformity motor vehicle emissions budgets were derived by taking the difference between the attainment year (1992) total emissions and the projected future years' total emissions. This difference is the "safety margin," part or all of which may be added to projected mobile sources CO emissions to arrive at a motor vehicle emissions budget to be used for transportation conformity purposes. The State added the safety margins, less one ton per day, to projected mobile sources CO emissions for 2005, 2010, and 2015. However, the State then rounded 62.5 tpd up to 63 tpd for the 2005 through 2009 budget and rounded 61.5 tpd up to 62 tpd for the 2010 through 2014 budget. Generally, rounding up budget values is not appropriate because the higher values may not be consistent with the maintenance demonstration, but in this case, the State's 0.5 tpd higher budgets can be accommodated within the one tpd of safety margin that the State did not initially allocate to the budgets. Therefore, we are ignoring the State's rounding errors and accepting 63 tpd as the budget for 2005 through 2009 and 62 tpd as the budget for 2010 through 2014.

The State's determination of safety margins and motor vehicle emissions budgets for the Greeley CO maintenance plan is further illustrated in Table V-1 below and in section 5 of the maintenance plan:

TABLE V-1.—MOBILE SOURCES EMISSIONS, SAFETY MARGINS, AND MOTOR VEHICLE EMISSIONS BUDGETS IN TONS OF CO PER DAY (TPD)

| Year | Mobile sources emissions (tpd) | Total emissions (tpd) | Math   | Margin of safety (tpd) | Motor vehicle emissions budget (tpd) |
|------|--------------------------------|-----------------------|--|------------------------|--------------------------------------|
| 1992 | 59.3                           | 75.7                  |  | N/A                    | N/A                                  |
| 2005 | 56.5                           | 68.7                  | 75.7 - 68.7 = 7<br>7 - 1 = 6<br>56.5 + 6 = 62.5 (plus 0.5) is 63             | 6                      | 63                                   |
| 2010 | 47.3                           | 60.5                  | 75.7 - 60.5 = 15.2<br>15.2 - 1 = 14.2<br>47.3 + 14.2 = 61.5 (plus 0.5) is 62 | 14.2                   | 62                                   |
| 2015 | 46.1                           | 60.4                  | 75.7 - 60.4 = 15.3<br>15.3 - 1 = 14.3<br>46.1 + 14.3 = 60.4 or 60            | 14.3                   | 60                                   |

Note: N/A = Not Applicable.

Our analysis indicates that the above figures are consistent with maintenance of the CO NAAQS throughout the maintenance period. Therefore, we are proposing approval of the following motor vehicle emissions budgets for the Greeley area: 63 tons per day for 2005

through 2009, 62 tons per day for 2010 through 2014, and 60 tons per day for 2015 and beyond.

Pursuant to § 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source

emissions budgets. EPA reviewed the Greeley CO budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Colorado APCD

on October 29, 2003, and was announced in the **Federal Register** on January 5, 2004 (69 FR 339). As a result of this adequacy finding, the budgets took effect for conformity determinations in the Greeley area on January 20, 2004. However, we note that we are not bound by that determination in acting on the maintenance plan.

In addition to the above, the State has made a commitment regarding transportation conformity in section 5 of the maintenance plan. Because informal roll-forward analyses, prepared by the State, indicate that the 2015 CO emissions budget may be exceeded by 2030, the State has committed to the re-implementation of the basic I/M program (with any Federally required on-board diagnostic tests) for the Greeley area in 2026. This commitment by the State is included in the maintenance plan for purposes of 40 CFR 93.122(a)(3)(iii), which provides that emissions reduction credit from such programs may be included in the transportation conformity emissions analysis if the maintenance plan contains such a written commitment. We agree with this interpretation of 40 CFR 93.122(a)(3)(iii) and will make this State commitment Federally enforceable if we approve the revised Greeley CO maintenance plan.

#### **VI. EPA's Evaluation of the Regulation No. 11 Revisions**

Colorado's Regulation No. 11 is entitled "Motor Vehicle Emissions Inspection Program." In developing the Greeley CO maintenance plan, the State evaluated a number of options for revising the current motor vehicle emissions inspection program. The final decision, based on the use of our Mobile6.2 emission factor model, was to eliminate the basic I/M program from the Federally-approved SIP beginning on January 1, 2004. A description of the State's process and emissions evaluation of the Regulation No. 11 revisions is found in sections 2 and 3 of the maintenance plan. These revisions to Regulation No. 11 were submitted, as a separate revision to the SIP, for our approval in conjunction with the revised maintenance plan.

The revisions adopted by the AQCC on December 19, 2002, and submitted by the Governor on June 20, 2003, remove the Greeley area component of the Colorado automobile inspection and maintenance program ("AIR Program") from the Federally-approved SIP. Section 2 of the maintenance plan reflects this change in Regulation No. 11 in that the mobile source CO emissions were calculated without the CO emissions reduction benefit of a basic

I/M program starting in 2004 and continuing through 2015. We note that even with the elimination of the basic I/M program and the elimination of the oxygenated fuels program, discussed below, for the Greeley area beginning on January 1, 2004, the area is still able to meet our requirements to demonstrate maintenance of the CO standard through 2015.

We have reviewed and are proposing approval of these State-adopted changes to Regulation No. 11.

#### **VII. EPA's Evaluation of the Regulation No. 13 Revisions**

Colorado's Regulation No. 13 is entitled "Oxygenated Fuels Program" (hereafter referred to as Regulation No. 13). The purpose of this regulation is to reduce CO emissions from gasoline powered motor vehicles in the Greeley area through the wintertime use of oxygenated fuels. Section 211(m) of the CAA originally required the State to implement an oxygenated fuels program in the Greeley area. Section 211(m) states that the oxygenated fuels program must cover no less than a four month period each year unless EPA approves a shorter period. We can approve a shorter implementation period if a State submits a demonstration that a reduced implementation period will still assure that there will be no exceedances of the CO NAAQS outside of this reduced period. This was done previously when we approved revisions to Regulation No. 13 for the Denver area, that also affected the Greeley area, that shortened the oxygenated fuels season and reduced the oxygenate content (see 62 FR 10690, March 10, 1997 and 64 FR 46279, August 25, 1999). When an area is redesignated to attainment, the oxygenated fuels program may be further shortened or eliminated entirely as long as the State is able to show the program is not needed to demonstrate maintenance of the CO NAAQS (see 65 FR 80779, December 22, 2000).

In developing the Greeley CO revised maintenance plan, the State evaluated options for revising the current oxygenated fuels program. The final decision, based on the use of our Mobile6.2 emission factor model, was to eliminate the oxygenated fuels program from the Federally-approved SIP beginning on January 1, 2004. A description of the State's process and emissions evaluation of the Regulation No. 13 revisions is found in sections 2 and 3 of the maintenance plan. These revisions to Regulation No. 13 were submitted, as a separate revision to the SIP, for our approval in conjunction with the revised maintenance plan.

The current EPA-approved oxygenated fuels program for the Greeley area has the following three requirements: (1) The control period is from November 1 through February 7 of each winter season, (2) an oxygen content of at least 2.0% by weight is required from November 1 through November 7, and (3) an oxygen content of at least 2.7% by weight is required from November 8 through February 7.

In conjunction with the submittal of the Greeley CO revised maintenance plan, the State of Colorado is seeking EPA's approval of revisions to Regulation No. 13 that would eliminate the oxygenated fuels program for the Greeley area beginning on January 1, 2004.

As we discussed above, and as presented in section 2 of the revised maintenance plan, the removal of the CO emission reductions associated with the implementation of Regulation No. 13 were incorporated by the State into the emission projections, using our Mobile6.2 emissions model, beginning in 2004 and were projected through the final maintenance year of 2015. Even with the elimination of both Regulation No. 11 and Regulation No. 13 for the Greeley area starting in 2004, maintenance of the CO NAAQS is successfully demonstrated.

We have reviewed these changes to Regulation No. 13, that the State adopted on December 19, 2002, and the Governor submitted on June 20, 2003. We are proposing approval of these revisions as they are consistent with maintenance of the CO NAAQS for the Greeley area and meet the requirements of section 211(m) of the CAA.

#### **VIII. Consideration of Section 110(l) of the CAA**

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA.

EPA originally anticipated final action on the revised Greeley CO maintenance plan by the end of 2004. However, for the reasons discussed below, we determined that we needed to postpone action on the plan until we acted on the Denver 8-hour ozone Early Action Compact (EAC) plan. This is because the revised CO maintenance plan eliminates the basic I/M program in the Greeley area.

The Greeley area is included in the Denver 8-hour ozone nonattainment boundary and is also included in the attainment demonstration modeling for

the Denver 8-hour ozone EAC plan. While the basic I/M program was originally adopted for Greeley to control CO emissions, it also produces some reduction in volatile organic compound (VOC) emissions, a precursor to ground level ozone formation. For example, vehicles in the Greeley area are failed for excessive hydrocarbon emissions, which contain VOCs. In other words, removal of the basic I/M program from the Greeley area could lead to an increase in ozone.

Under EPA's interpretation of section 110(l) of the Clean Air Act, we cannot approve the removal of the basic I/M program from the Greeley area absent a substitute revision providing equivalent or greater VOC reductions or a demonstration that elimination of the program will not interfere with relevant requirements of the Clean Air Act (in this case, attainment of the 8-hour ozone NAAQS.)

The State is not providing a substitute SIP revision. Instead, Colorado intends to demonstrate non-interference through its 8-hour ozone attainment demonstration, which is part of the Denver 8-hour ozone EAC plan that the Governor submitted on July 21, 2004. The 8-hour ozone attainment demonstration takes no emissions reduction credit for the Greeley basic I/M program. We have not acted on the Denver 8-hour ozone EAC plan, but intend to do so in the near future.

Assuming we approve the Denver EAC ozone attainment demonstration, we will then have the technical and legal basis to approve the removal of the Greeley area basic I/M program from the SIP. Thus, we must approve the Denver 8-hour ozone EAC plan before, or at the same time, we approve the removal of the Greeley area basic I/M program from the SIP. Accordingly, we will not finalize approval of the revised Greeley CO maintenance plan and revised Regulation No. 11 unless and until we approve the Denver 8-hour ozone EAC plan.

#### IX. Proposed Action

In this action, EPA is proposing approval of the Greeley revised carbon monoxide maintenance plan, the transportation conformity budgets for 2005 through 2009, 2010 through 2014, and 2015 and beyond, and the revisions to Regulation No. 11 and Regulation No. 13.

Submit your comments, identified by RME Docket Number R08-OAR-2004-CO-0004, by one of the methods identified above at the front of this proposed rule. We will consider your comments in deciding our final action if they are received before June 16, 2005.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### X. Statutory and Executive Order Reviews

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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region VIII.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[RME Docket Number R08-OAR-2005-CO-0001; FRL-7912-9]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Early Action Compact Ozone Plan, Attainment Demonstration of the 8-hour Ozone Standard, and Approval of Related Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Colorado. On July 21, 2004, the Governor of Colorado submitted an Early Action Compact (EAC) ozone plan