Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this 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. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 12, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–12204 Filed 5–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0810; FRL–9816–4]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards; Prevention of Significant Deterioration Requirements for $PM_{2.5}$ Increments and Major and Minor Source Baseline Dates; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submissions from the State of Colorado to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for particulate matter less than or equal to 2.5 micrometers (μm) in diameter ($PM_{2.5}$) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that they meet the requirements of the ''infrastructure elements'' necessary to implement the new or revised NAAQS. Colorado submitted certifications of its infrastructure SIP for the 1997 and the 2006 $PM_{2.5}$ NAAQS on April 4, 2008 and on June 4, 2010, respectively. Colorado also submitted revisions to Regulation 3 of the Air Quality Control Commission permitting requirements for the Prevention of Significant Deterioration (PSD) program on May 11, 2012 and May 13, 2013 that incorporate the required elements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. EPA proposes to approve portions of these two SIP revisions that bring Colorado's PSD regulations up to date for regulated pollutants. EPA does not propose to act on the portions of the submission for the 2006 $PM_{2.5}$ NAAQS that are intended to meet requirements related to interstate transport of air pollution. EPA will act on the remainder of the submissions in a separate action.

DATES: Written comments must be received on or before June 24, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0810, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ayala.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0810. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* 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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 email comment directly to EPA, without going through *www.regulations.gov* your email 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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* 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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 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, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado

80202–1129, (303) 312–6142, *ayala.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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 initials *APCD* mean or refer to the Air Pollution Control Division.
(iii) The initials *APENs* mean or refer to Air Pollution Emission Notices.
(iv) The initials *APPCA* mean or refer to the Air Pollution Prevention and Control Act.
(v) The initials *AQCC* mean or refer to the Air Quality Control Commission.
(vi) The initials *CBI* mean or refer to confidential business information.
(vii) The initials *CFC* mean or refer to chlorofluorocarbons.
(viii) The initials *CRS* mean or refer to Colorado Revised Statutes.
(ix) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
(x) The initials *FIP* mean or refer to a Federal Implementation Plan.
(xi) The initials *GHG* mean or refer to greenhouse gases.
(xii) The initials *NAAQS* mean or refer to national ambient air quality standards.
(xiii) The initials NO_X mean or refer to nitrogen oxides.
(xiv) The initials *NNSR* mean or refer to nonattainment new source review.
(xv) The initials *NSR* mean or refer to new source review.
(xvi) The initials *PM* mean or refer to particulate matter.
(xvii) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
(xviii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (course particulate matter).
(xix) The initials *ppm* mean or refer to parts per million.
(xx) The initials *PSD* mean or refer to Prevention of Significant Deterioration.
(xxi) The initials *SIL* mean or refer to Significant Impact Levels.
(xxii) The initials *SIP* mean or refer to State Implementation Plan.
(xxiii) The initials *SSM* mean or refer to start-up, shutdown, or malfunction.
(xxiv) The initials *SMC* mean or refer to Significant Monitoring Concentrations.
(xxv) The initials *VOC* mean or refer to volatile organic compounds.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for $PM_{2.5}$. Two new $PM_{2.5}$ standards were added, set at 15 μg/m³, based on the three-year average of annual arithmetic mean $PM_{2.5}$ concentration from single or multiple community-oriented monitors, and 65 μg/m³, based on the three-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area. In addition, the 24-hour $PM_{2.5}$ standard was revised to be based on the 99th percentile of 24-hour PM_{10} concentration at each monitor within an area (62 FR 38652).

On October 17, 2006 EPA promulgated a revised NAAQS for $PM_{2.5}$, tightening the level of the 24-hour $PM_{2.5}$ standard to 35 μg/m³ and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m³. EPA also retained the 24-hour PM_{10} and revoked the annual PM_{10} standard (71 FR 61144). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 and 2006 $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

III. What is the scope of this rulemaking?

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (1) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (2) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions

limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); (3) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (4) existing provisions for prevention of significant deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, ''Infrastructure SIP Requirements for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' in the section entitled, ''What is the scope of this final rulemaking?'' (*see* 76 FR 41075 at 41076–41079).

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

We will act separately on element 110(a)(2)(D), which pertains to interstate transport of pollutants.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment new source review (NSR)'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

V. How did Colorado address the infrastructure elements of sections 110(a)(1) and (2)?

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. *Colorado's response to this requirement:* Enforceable limitations and control measures are detailed in the various Air Quality Control Commission (AQCC) regulations for all sources of criteria pollutants as well as hazardous air pollutants, volatile organic compounds (VOCs), chlorofluorocarbons (CFCs), smoke and odors. A summary of the regulations which the State submitted as relevant to this element can be found within the State's certification documents dated April 4, 2008 and June 4, 2010 which are included in the docket prepared for public review.

b. *EPA analysis:* Colorado's SIP meets the requirements of CAA section 110(a)(2)(A), subject to the following clarifications. First, EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2). In general, those provisions addressed ozone non-attainment in the Denver metropolitan area and are not relevant to implementation of the 1997 or 2006 $PM_{2.5}$ NAAQS. Colorado also referenced SIP provisions that are relevant, such as limits on emissions of particulate matter in Regulation 1, woodburning controls in Regulation 4, and the State's minor NSR and PSD programs in Regulation 3. We propose to find these provisions adequately address the requirements of element (A), again subject to the clarifications made in this notice.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during startup, shutdown, or malfunction (SSM) or operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [1] and the Agency is addressing such state regulations separately (78 FR 12460, February 22, 2013).

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

a. *Colorado's response to this requirement:* The provisions for episode monitoring, data compilation and

[1] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (Sept. 20, 1999).

reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP which was approved by EPA on July 9, 1980 (45 FR 46073) and August 11, 1980 (45 FR 53147). The State has since revised the monitoring SIP to include all new federal requirements. The revised SIP includes a commitment to operate a particulate monitoring network in accordance with EPA regulations (40 CFR 58.20 and appendices A through G). The AQCC adopted monitoring SIP revisions on March 18, 1993.

As part of the monitoring SIP, Colorado submits a Colorado Annual Network Monitoring Plan (ANMP) each year for EPA approval. The ANMP details monitoring locations for all criteria pollutants, including $PM_{2.5}$, and lists the quality assurance accuracy audits and precision check methods performed for each monitor. The Colorado APCD periodically submits a Quality Management Plan and a Quality Assurance Project Plan to EPA Region 8. These plans cover procedures to monitor, analyze data and report data to an EPA central database. The State of Colorado has an approved monitoring SIP, a plan and authority for monitoring, and the ability to properly handle all related data.

b. *EPA analysis:* Colorado's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 and 2006 $PM_{2.5}$ NAAQS. The Colorado 2011 ANMP was approved by EPA Region 8 on September 20, 2011.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *Colorado's response to this requirement:* Colorado has an approved SIP regulating the construction and modification of stationary sources as necessary to assure the NAAQS are achieved (AQCC Regulation 3), including a permit program as required in parts C and D of the federal CAA. Colorado has an approved SIP which provides for the enforcement of the control measures required by CAA section 110(a)(2)(C).

Many of the AQCC regulations address in some manner the programs for enforcement of control measures. Some of these AQCC regulations and other relevant Colorado-specific programs that are in the SIP are described below.

Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides—Regulation 1 sets forth emissions limitations, equipment requirements, and work practices (abatement and control measures) intended to control the emissions of particulates, smoke, and sulfur oxides from new and existing stationary sources. Control measures specified in this regulation are designed to limit emissions into the atmosphere and thereby minimize the ambient concentrations of particulates and sulfur dioxides.

Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements—Regulation 3 provides for a procedural permitting program and requires air pollution sources to file Air Pollution Emissions Notices (APENs). The regulation also requires new or modified sources of air pollution, with certain exemptions, to obtain preconstruction permits.

Regulation 3 has been revised to incorporate $PM_{2.5}$ emissions, requiring major sources in the State to be subject to PSD and NSR permitting thresholds for $PM_{2.5}$ at the same level as PM_{10}. On May 11, 2012, Colorado submitted a revision to incorporate the 2008 $PM_{2.5}$ Implementation rule (73 FR 28321, May 16, 2008) and the 2010 $PM_{2.5}$ Increment rule (75 FR 64864, October 20, 2010). Specifically, the AQCC adopted revisions to incorporate significant emission rates for $PM_{2.5}$ emissions, including $PM_{2.5}$ precursors (sulfur dioxide and nitrogen oxides, and condensable particulate matter), $PM_{2.5}$ increments, the definitions of major and minor source baseline dates and baseline area.

Regulation 3 also was revised in 2008 to address ozone formation in the Denver Metro Area/North Front Range Ozone nonattainment area. Specifically, the AQCC adopted revisions to control and reduce ozone precursor emissions. The revisions are part of the federally-enforceable SIP to help Colorado make progress toward eventual compliance with the 2008 ozone NAAQS.

Regulation 4, Woodburning Controls—Regulation 4 requires new woodstove and fireplace inserts to meet the federal certification requirements in specified areas of Colorado.

Regulation 7, Volatile Organic Compound Control—Regulation 7 controls the emissions of VOCs, primarily in the Denver-metro area. It sets standards and mandates control for specific types of VOC sources. In 2008 Regulation 7 was revised to increase control requirements for oil and gas condensate tanks, glycol dehydrators, and reciprocating internal combustion engines. These revisions were made as part of the State's Ozone SIP.

Regulation 11, Motor Vehicle Inspection—Regulation 11 requires automobile emission inspection and maintenance programs to be implemented in specified areas of the state for gasoline powered on-road vehicles. These programs apply to businesses, industry, and the general public. In addition, the State's Automobile Inspection and Readjustment (AIR) program's purpose is to reduce motor vehicle related pollution through the inspection and emissions related repair of automobiles. The program as defined in Regulation 11, works in specific areas of the state, and requires motor vehicles to meet emission standards through periodic inspection and, as necessary, repair.

Regulation 16, Street Sanding and Sweeping—Regulation 16 sets specification standards for street sanding material and street sweeping practices in the area covered by the AIR program and Denver-metro particulate attainment/maintenance area.

Common Provisions Regulation—The Colorado APCD may require owners and operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the Division under the provisions of the AQCC Common Provisions regulation.

b. *EPA analysis:* To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 and 2006 $PM_{2.5}$ NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

Colorado has a SIP-approved PSD program that meets the general requirements of part C of the Act (51 FR 31125). To satisfy the particular requirements of section 110(a)(2)(C), states should have a PSD program that applies to all regulated NSR pollutants, including greenhouse gases (GHGs). See 40 CFR 51.166(b)(48) and (b)(49). The PSD program should reflect current requirements for these pollutants. In particular, for three pollutants—ozone, $PM_{2.5}$, and GHGs—there are additional

regulatory requirements (set out in portions of 40 CFR 51.166) that we consider in evaluating Colorado's PSD program.

On January 9, 2012 (77 FR 1027), we approved a revision to the Colorado PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved Colorado PSD program meets current requirements for ozone.

We evaluate PSD Requirements for GHGs. In EPA's rule, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans'' (''PSD SIP Narrowing Rule''), (75 FR 82536, December 30, 2010), EPA withdrew its previous approval of Colorado's PSD program to the extent that it applied PSD permitting to GHG emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule''), 75 FR 31514. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Colorado's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its April 4, 2008 and June 4, 2010 infrastructure certifications, Colorado relied upon its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). In a letter dated May 10, 2011, the State clarified its certifications to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement. As a result, Colorado's PSD program as approved in the SIP meets current requirements for GHGs.

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) and on October 20, 2010 EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013,the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA,* 706 F.3d 428 (DC Cir.), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The Court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated New Source Review (NSR) requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the Court's decision. Accordingly, the EPA's approval of Colorado's infrastructure SIP as to elements (C) or (J) with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the Court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado's PSD program up to date with respect to current requirements for $PM_{2.5}$. We propose to approve the necessary portions of Colorado's May 11, 2012 and May 13, 2013 submissions to reflect the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule; specifically 40 CFR part 166, paragraphs (b)(14)(i), (ii), (iii), (b)(15)(i), (ii), (b)(23)(i), (b)(49)(i), (vi), and paragraph (c)(1). Specifically, EPA is proposing to approve revisions to: Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), (a).(ii), (a).(iii), and (b).(i), II.A.38.c and g, II.A.42.a. and X.A.1. as submitted on May 11, 2012, and revisions to II.A.23.c, as submitted on May 13, 2013. We are not proposing to act on any other portions of the May 11, 2012 submittal, including the adoption of significant impact levels (SILs) and significant monitoring concentrations (SMCs) for $PM_{2.5}$.

With these revisions, Colorado's SIP-approved PSD program will meet current requirements for $PM_{2.5}$. As a result, EPA is proposing to approve Colorado's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Section II of the Colorado SIP, and was originally approved by EPA as Section 2 of the SIP (*see* 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and

modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Colorado's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. *Interstate Transport:* Section 110(a)(2)(D)(i) is subdivided into four ''prongs,'' two under 110(a)(2)(D)(i)(I) and two under 110(a)(2)(D)(i)(II). The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit emissions that (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. As noted, we are not acting on the requirements of section 110(a)(2)(D)(i) in this proposed rulemaking.

5. *Interstate and International transport provisions:* Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). As noted, we are not acting on the requirements of section 110(a)(2)(D)(ii) in this proposed rulemaking.

6. *Adequate resources and authority:* Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(iii) requires states to ''provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. *Colorado's response to this requirement:* There are no state or federal provisions prohibiting the implementation of any provision of the Colorado SIP. In general, Colorado provides the necessary assurances that funding, personnel, and authority exist and that the State of Colorado has responsibility for implementing local provisions. The AQCC adopted all of the regulatory provisions in the SIP pursuant to authority delegated to it by statute. The AQCC's general authority to adopt the rules and regulations necessary to implement the SIP is set out in the Colorado Air Pollution Prevention and Control Act (APPCA) section 25–7–105 of the Colorado Revised Statutes (CRS). The authority for the APCS to administer and enforce the program is set out at 25–7–111 CRS. Additional authority to regulate air pollution and implement provisions in the SIP is set out elsewhere in the Colorado APPCA, Article 7 of Title 25. In addition, the AQCC and the APCD have the authority delegated to them in sections 42–4–301 to 42–4–316, CRS (concerning motor vehicle emissions) and 42–4–414 (concerning emissions from diesel-powered vehicles).

The AQCC's authority includes the authority to regulate particulate emissions, regardless of size (CRS section 25–7–109(2)(b)).

The Colorado APCD has staff and an annual budget to operate its six programs (Stationary Sources, Mobile Sources, Indoor Air, Technical Service, Planning and Policy, and Administrative Services). As of June 30, 2009, the APCD employed 159 people and had a budget of $19.7 million for fiscal year 2009.

Of the total budget, 17 percent was derived from federal grants, 32 percent from mobile source fees, 47 percent from stationary source fees, and 4 percent from other cash sources.

Relationships with other agencies responsible for carrying out State activities—The Colorado APCD contracts with local governments in two distinct ways: (1) Colorado grants monies to local health departments to endow them as agents of the State to provide inspections of some local stationary sources, asbestos abatement jobs, and CFC sources. Some local health departments also operate gaseous and particulate monitors under contract for the State. These efforts must comply with federal and state regulations; and (2) Colorado grants monies to local governments to help pay for their support of SIP elements via public and private partnerships, education and informal campaigns. Most of these agencies create their own work plan that consists of programs they believe will help enhance air quality in their communities in accordance with SIP directives.

Colorado has adopted specific regulations for local attainment/maintenance areas to assure these areas meet requirements of the SIP. These regulations include the Colorado AQCC SIP-specific regulations, 5 CCR 1001–20. These regulations provide the necessary authority for the Colorado APCD to adequately enforce the provisions of the SIP elements in local attainment/maintenance areas.

b. *EPA Analysis:* Colorado's SIP meets the requirements of sections 110(a)(2)(E)(i) and (E)(iii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. The State cites the Colorado Revised Statutes, specifically the APPCA Sections 25–7–105, 25–7–111, 42–4–301 to 42–4–316, 42–4–414 and Article 7 of Title 25 to demonstrate that the APCD and AQCC have adequate authority to carry out Colorado's SIP obligations with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS and to revise its SIP as necessary. The State received Sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments.

7. *State boards:* Section 110(a)(2)(E)(ii) requires that the State comply with the requirements respecting State boards under section 128.

a. *Colorado's response to this requirement:* Section 128 of the CAA indicates Colorado's SIP must contain

requirements that anybody approving permits or enforcement orders under the CAA must have a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement actions.

The AQCC Procedural Rules, section 1.11.0, state that ''The Commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission.''

b. *EPA Analysis:* On April 10, 2012 (77 FR 21453) EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meets the requirements of section 128 are provided in our January 4, 2012 proposal notice (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS for this element.

8. *Stationary source monitoring system:* Section 110(a)(2)(F) requires:

(i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.

a. *Colorado's response to this requirement:* Colorado AQCC Regulations 1, 3, and 6 address the issue of stationary source monitoring. Colorado Regulation 1 sets forth emission limitations, equipment requirements, and work practices (abatement and control measures) intended to control the emissions of particulates, smoke, and sulfur dioxides from new and existing stationary sources. Colorado Regulation 3 requires stationary sources to report their emissions on a regular basis through APENs. This air pollutant inventory program is described in the APPCA Section 25–7–114.1 (CRS) and in Colorado Regulation 3, Part I.VIII that allows for record keeping of air pollutants. Colorado Regulation 6 sets standards of performance for monitoring and new stationary sources in the state and establishes monitoring system requirements.

The Colorado APCD may require owners and operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the APCD under the provisions of the AQCC Common Provisions regulation.

b. *EPA Analysis:* The regulations cited by Colorado, including APEN reporting requirements and requirements in Regulation 3, Part I.VIII, meet the requirements of section 110(a)(2)(F) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

9. *Emergency powers:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *Colorado's response to this requirement:* The State has the authority to implement emergency powers similar to section 303 of the CAA. First, the EPA-approved ''Denver Emergency Episode Plan'' addresses ozone, particulate matter (PM_{10}), and carbon monoxide for the Denver-metro region and requires the State to implement protective measures when air quality exceeds defined thresholds. Additionally, the APPCA Sections 25–7–112 and 25–7–113, which have various sections similar to 42 U.S.C. 7603, generally describe Colorado's authority regarding Emergency Episodes. For example, 25–7–112(2) provides the Governor the authority to implement emergency provisions through an order to the Colorado APCD.

As described in EPA's September 25, 2009 guidance, areas that have had a $PM_{2.5}$ exceedance greater than 140.4 μg/m³ should have an emergency episode plan. If no such concentration was recorded since 2006, the State can rely on its general emergency authorities. Colorado has never had such a $PM_{2.5}$ level and thus an emergency episode plan for $PM_{2.5}$ is not necessary. Nevertheless, the State certifies it has the appropriate emergency powers to address $PM_{2.5}$ episodes, as described above.

Additionally, the State implements EPA's air quality index system and typically issues alerts and advisories to the public when any pollutant is expected to or exceeds an AQI value of 100. If $PM_{2.5}$ concentrations are expected to or actually exceed EPA's recommended index value thresholds of 201 (alert), 301 (warning), 350.5 (significant harm), or 401 (emergency), the State can invoke emergency powers.

b. *EPA analysis:* Colorado Pollution Prevention and Control Act Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. In our 2009 guidance for infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS, we suggested that states that had monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140.4 μg/m³, using the most recent three years of data, should develop emergency episode plans for the areas with the monitored values. We also suggested that, if these levels had not been exceeded, states could certify that they had adequate general emergency authority to address $PM_{2.5}$ episodes. In this rulemaking, we view these suggestions as still appropriate in assessing Colorado's SIP for this element. Colorado has not monitored any values above the 140.4 μg/m³ level for $PM_{2.5}$ for the past three years (e.g., 2009, 2010, and 2011). Since this level was not exceeded in any area of the state and the State has demonstrated that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, no specific emergency episode plans are necessary at this time. The SIP therefore meets the requirements of section 110(a)(2)(G) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

10. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan:

(i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) Except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].

a. *Colorado's response to this requirement:* The State of Colorado has the ability and authority to address and

revise the SIP due to changes in the NAAQS or due to findings of inadequacies.

The Colorado AQCC has the authority and duty to adopt and revise a SIP as necessary to comply with the federal requirements. Colorado APPCA section 25–7–105(1)(a)(I) (CRS) directs the Colorado AQCC to promulgate rules and regulations as related to a comprehensive SIP which will assure attainment and maintenance of the NAAQS and which will prevent significant deterioration or air quality in the State of Colorado.

Colorado APPCA section 25–7–109 (CRS) also gives the Colorado AQCC the authority to promulgate emission control regulations.

b. *EPA analysis:* Colorado's statutory provision at Colorado APPCA Section 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H).

11. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to [PSD] of air quality and visibility protection).''

a. *Colorado's response to this requirement: Consultation*—Engineering and meteorological consultation is provided by the State to local agencies. The State assists local agencies in planning air management programs for their respective areas. The Colorado AQCC holds public meetings and hearings on all SIP revisions in accordance with the AQCC Procedural Rules. Public comment is solicited and accepted at Colorado AQCC meetings and hearings.

Colorado's Transportation Conformity Rule, Regulation 10, specifies consultation procedures for SIP revisions in Section IV.F.

Also, as part of the State of Colorado's Visibility SIP, the APCD consults with the Federal Land Managers and other states as necessary and required.

Public notification—Colorado notifies the public of instances or of areas in which any national primary ambient air quality standard is exceeded. Included in this notification are public awareness announcements regarding health hazards and manners in which the public can participate in regulatory and other efforts to improve Colorado's air quality. Not only does the State provide after-the-fact information about readings in excess of the NAAQS, the Denver PM_{10} SIP provides for advance warnings to the public that the NAAQS may be exceeded whenever meteorological conditions make it possible or likely for ambient concentrations to exceed the NAAQS.

The Colorado APCD prepares a daily public notification in the form of an Air Pollution Advisory for a nine-county Denver-Boulder metropolitan and North Front Range area and the communities of Fort Collins and Greeley. The advisory is posted on the APCD Web site and includes details of the day's air quality and visibility, a forecast of the coming day's air quality, residential burning restrictions, and voluntary motor vehicle driving reduction requests during the winter high pollution season. The advisory includes links to an open burning forecast and other important information such as the day's Air Quality Index, the health effects of specific pollutants, and measures that can be taken by the public to reduce exposure. While not part of Colorado's SIP, the advisories are part of an ongoing commitment by the State to inform and educate citizens about air quality.

Other Colorado communities also maintain and operate daily air quality forecasts, including Mesa County on the Western Slope and El Paso County in the Colorado Springs area.

The State has developed Natural Events Action Plans that include public notification and education elements. While not a formal part of the State SIP, the plans include provisions to notify the public about actions to take during imminent blowing dust and wildfire events that could lead to high levels of particulate matter.

Prevention of Significant Deterioration—Colorado AQCC Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements), Regulation 6 (Standards of Performance for New Stationary Sources), and Colorado's Long Term Strategy for Visibility Protection adequately address PSD and Visibility Protection. For example, new major stationary sources or major modifications are restricted in their emissions in order to protect the PSD increment under Colorado AQCC Regulation 3. PSD and visibility analyses are also required by NSR regulations of Colorado. Colorado is required to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any Class I Area. Colorado AQCC Regulation 3.XI.E, ''New Source Review'' (Appendix D) describes the applicant's demonstration that the proposed source will not have an adverse effect on visibility in Class I areas.

Visibility—For $PM_{2.5}$, Colorado's visibility program contains adequate provisions that are either in the SIP or submitted for inclusion into the SIP to prohibit any source or other type of emission activity in the State from emitting air pollutants in amounts that will interfere with measures required to be included in the applicable implementation plan of another state to protect visibility. Colorado's implementation plan also adheres to the direction set forth in EPA's applicable guidance interpreting this section of the CAA.

The plan submitted to EPA on March 31, 2010 demonstrates that there is a significant downward trend in Colorado's visibility impairing emissions, visibility in surrounding Mandatory Class I Areas is improving over time, and regional modeling indicates Colorado has a small contribution to out-of-state haze. Thus, air pollution sources and other types of emission activity within the State of Colorado do not interfere with measures required to be included in the applicable implementation plan of another state to protect visibility.

b. *EPA Analysis:* The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously approved Colorado's SIP submission to meet the requirements of CAA section 127 (45 FR 53147, August 11, 1980).

Colorado's SIP regulations for its PSD program were federally-approved and made part of the SIP on September 2, 1986 (51 FR 31125). EPA has further evaluated the State's SIP-approved PSD program in section V.3, element 110(a)(2)(C) of this proposed action. As explained in that section, we propose to approve Colorado' s infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the requirement in element (C) to have a permit program as required by Part C of the Act. We correspondingly propose to approve the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the requirement in element (J) that the SIP meet the applicable requirements of Part C with respect to PSD.

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. In

the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the Colorado SIP meets the requirements of section 110(a)(2)(J) for the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the requirements of sections 121 and 127 of the Act, and also meets the requirements of section 110(a)(2)(J) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

12. *Air quality and modeling/data:* Section 110(a)(2)(K) requires that each SIP provide for:

(i) The performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS], and

(ii) The submission, upon request, of data related to such air quality modeling to the Administrator.

a. *Colorado's response to this requirement:* Colorado has the authority and resources to model for criteria pollutants, including $PM_{2.5}$. Air quality modeling is done for SIP revisions and for transportation conformity. Colorado Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements) requires stationary sources to predict the effect of air pollutants in attainment areas. Regulation 3 also details the State of Colorado's program regarding permitting as related to air quality modeling and data handling in predicting the effect of emissions of a pollutant with an established NAAQS. Regulatory requirements for Air Quality Related Values as related to modeling are described within Colorado Regulation 3, Part B, subsection X and XI. A permit modification for purposes of the acid rain portion of a permit are governed by regulations promulgated under Title VI of the federal act, found in 40 CFR Part 72 as described under Colorado Regulation 3, Part C, subsection X.K.

The Modeling, Meteorology, and Emission Inventory Unit within the Colorado APCD performs and reviews air quality impact analyses for a variety of programs, including SIP revisions, transportation conformity determinations, stationary source permitting, environmental impact statements, and hazardous waste site audits. The analyses include modeling, meteorological analysis, and emission inventory development for mobile sources and area stationary sources such as woodburning. The Unit also performs air quality forecasting for the Denver-metro area High Pollution Season, open burning, and for special air quality studies. Additional information regarding these programs and authority is provided below. Some of these programs are found in the SIP. For example, both Colorado AQCC Regulation 4 (Woodburning) and the Denver PM_{10} SIP address state air quality modeling programs.

PSD and Increment Consumption—Colorado's PSD program includes a requirement that the State periodically assess the adequacy of its plan to prevent significant deterioration of air quality. This is presented in Regulation 3, Part B, section VII. In addition, Regulation 3, Part A, section VIII, ''Technical Modeling and Monitoring Requirements'' states that all estimates of ambient concentrations required under Regulation 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by EPA and specifically approved by the APCD.

SIP Development—Modeling is performed in the development and revision of SIPs, as needed, to ensure specific areas of the State will maintain or re-attain compliance with the NAAQS in light of development and increased population and traffic.

Permits—The primary Colorado regulation for air quality permits is Colorado AQCC Regulation 3. Certain new/modified air pollution sources are subject to the regulatory modeling requirements in Regulation 3. Regulation 3, Part A, subsection VIII describes Colorado's technical modeling and monitoring requirements. Modeling is often required to obtain a construction permit. While modeling is not required to obtain an operating permit, it may be required if the operating permit is modified (in Regulation 3, Part C, subsection X—Minor Permit Modification Procedures). Operating permits may also be subject to modeling if the application is for a combined construction/operating permit (Regulation 3, Part C, subsection III.C.12.d).

b. *EPA Analysis:* Colorado's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In particular, Colorado's Regulation 3 Part A.VIII requires estimates of ambient air concentrations be based on applicable air quality models approved by EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees:* Section 110(a)(2)(L) requires SIPs to:

Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover—

(i) The reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) If the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V * * *

a. *Colorado's response to this requirement:* The State of Colorado requires the owner or operator of a major stationary source to pay the Colorado APCD any fee necessary to cover the reasonable costs of reviewing and acting upon any permit application. The collection of fees is described in Colorado AQCC Regulation 3. Specifically, Regulations 3, Part A.VI describes how each applicant required to obtain a permit must pay a fee, including the cost of permit review and relevant actions. Also, stationary source owners or operators must pay an annual fee based on total emissions. The funds are used by the State to administer programs for the control of air pollution from stationary sources.

b. *EPA Analysis:* Colorado's approved title V operating permit program meets the requirements of CAA section 111(a)(2)(L) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, October 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program. In addition, as described by Colorado, the State collects fees that cover the cost of review of permits for major stationary sources.

14. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. *Colorado's response to this requirement:* Colorado AQCC Regulation 10, ''Transportation Conformity,'' defines the criteria the Colorado AQCC uses for transportation

conformity determinations to develop SIP revisions in non-attainment areas. Interagency consultation requirements are detailed in Regulation 10, and meet the federal requirements under 40 CFR 51.390, as published at 62 FR 43780 (August 15, 1997). Colorado AQCC Regulation 3 also provides for consultation and participation by local entities. Local governments receive notice and have the opportunity to comment on and participate in construction permit review procedures and operating permit application procedures.

The Colorado AQCC holds a public hearing before adopting any regulatory revisions to the SIP. Local political subdivisions may participate in the hearing.

b. *EPA Analysis:* Colorado's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

VI. What action is EPA taking?

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: (A), (B), (C) with respect to minor NSR requirements, (E), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127 of the Act, (K), (L), and (M). EPA proposes to approve infrastructure elements (C) and (J) with respect to PSD requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is also proposing to approve revisions to Regulation 3 submitted by Colorado on May 11, 2012, and May 13, 2013, which incorporate the requirements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule; specifically, revisions to: Regulation 3, Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), (a).(ii), (a).(iii), and (b).(i), II.A.38.c and g, II.A.42.a. and X.A.1. as submitted on May 11, 2012, and revisions to II.A.23.c, as submitted on May 13, 2013. EPA is taking no action at this time on infrastructure element (D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- 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);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 13, 2013.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

[FR Doc. 2013–12215 Filed 5–22–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2012–0017; FWS–R1–ES–2013–0012; 4500030113]

RIN 1018–AX72; 1018–AZ54

Endangered and Threatened Wildlife and Plants; Threatened Status and Designation of Critical Habitat for Eriogonum codium (Umtanum Desert Buckwheat) and Physaria douglasii subsp. tuplashensis (White Bluffs Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our May 15, 2012, proposed listing and designation of critical habitat for the *Eriogonum codium* (Umtanum desert buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs bladderpod) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties an opportunity to comment on the proposed rules and to follow proper procedure in accordance with 16 U.S.C. section 1533(b)(5). Comments previously submitted on the proposed rules need not be resubmitted, as they will be fully considered in our determinations on these rulemaking actions.

DATES: The comment period for the proposed rule published May 15, 2012 (77 FR 28704), is reopened. We will consider all comments received or postmarked on or before July 22, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0017, or by mail from the Washington Field Office (see **FOR FURTHER INFORMATION CONTACT**).