EPA APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* *	* *	*	*	*
Lexington Maintenance Plan	Fayette County, Scott County.	08/24/04	09/16/04, [Insert Federal Register citation].	
* *	* *	*	*	*

[FR Doc. 04–20893 Filed 9–15–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0001; FRL–7813–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Revised Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On October 15, 2003, the Governor of Colorado submitted a revised maintenance plan for the Denver-Boulder metropolitan (hereafter, Denver) carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan also contained a revised transportation conformity budget for the year 2013. In this action, EPA is approving the Denver CO revised maintenance plan and revised transportation conformity budget. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on November 15, 2004 without further notice, unless EPA receives adverse comment by October 18, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0001, by one of the following methods:

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

• *Agency Web site: 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* and *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–0001. 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*, or e-mail. EPA's Regional Materials in EDOCKET and *federal 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, 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*.

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 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 approving a revised maintenance plan for the Denver CO attainment/maintenance area, that is designed to keep the area in attainment for CO through 2013, and we're also approving revised transportation conformity motor vehicle emissions budgets (MVEB). We approved the original CO redesignation to attainment and maintenance plan for the Denver area on December 14, 2001 (see 66 FR 64751); our approval became effective on January 14, 2002.

The original Denver CO redesignation maintenance plan, approved on December 14, 2001, 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 based on 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, called MOBILE6.2, and notified Federal, State, and local agency users of this update. 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. The State revised and updated the mobile sources CO emissions with MOBILE6.2 for each of the three years assessed in the previously approved maintenance plan (2001, 2006, and 2013), recalculated the CO intersection levels using CAL3QHC, revised the MVEB, and also applied a selected amount of the available safety margin to the transportation conformity MVEB. We have determined that these changes are approvable as further described 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 revised Denver Carbon Monoxide (CO) Maintenance Plan on June 19, 2003. The AQCC adopted the revised maintenance plan directly after the hearing. This SIP revision became State effective on August 30, 2003, and was submitted by the Governor to us on October 15, 2003.

We have evaluated the Governor's submittal for the revised maintenance plan and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's October 15, 2003, submittal became complete on April 15, 2004.

IV. EPA's Evaluation of the Revised Maintenance Plan

EPA has reviewed the State's revised maintenance plan for the Denver attainment/maintenance 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 revised the original Denver maintenance plan and has provided 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 original Denver CO maintenance plan,

approved by EPA on December 14, 2001, relied on ambient air quality data from 1996 through 1999. The revised Denver CO maintenance plan, submitted by the Governor on October 15, 2003, relies on ambient air quality data from 2000, 2001, and 2002. Further, we have reviewed ambient air quality data from 2003 and the first calendar quarter of 2004 and the Denver area shows continuous attainment of the CO NAAQS from 2000 to present. All the above-referenced air quality data are archived in our Aerometric Information and Retrieval System (AIRS).

(b) The State updated the attainment year (2001) and projected years (2006 and 2013) emission inventories.

The revised maintenance plan that the Governor submitted on October 15, 2003, included comprehensive inventories of CO emissions for the Denver 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 revised 2001 attainment year inventory, the revised 2006 projected inventory, and the revised 2013 projected inventory are documented in the maintenance plan in section C, and in the State's TSD. The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 2001 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 DENVER

	2001	2006	2013
Point Sources	*31.6	*25.6	*25.6
Area Sources	185.7	160.9	160.8
Non-Road Mobile Sources	55.9	57.7	61.4
On-Road Mobile Sources	1638	1614	1125
Total	1911	1858	1373

*The reduction in point source emission figures, from the original maintenance plan, is due to the use of actual emissions instead of allowable emissions for non-elevated sources.

We note in Table IV–1, the revised emission figures project significant reductions in years 2006 and 2013 for point sources and area sources. The majority of the projected area source reductions are from the State's estimates for less woodburning in future years. We believe this projection of less woodburning is reasonable. For point sources, the original Denver CO maintenance plan used sources' potential-to-emit (PTE) for 2001, but used projections of actual emissions for the years 2006 and 2013. The revised maintenance plan now uses actual point source emissions for 2001 and also projects actual emissions from point sources in 2006 and 2013. The State's approach follows EPA guidance on projected emissions and we believe it is acceptable.[1] Further information on these projected emissions may also be found in Section 3 ''Non-Mobile Source Emission Inventory'' of the State's TSD. The revised mobile source emissions show the largest change from the original 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 in Chapter 2 and Appendix C. Much of the modeling data, input-output files, fleet makeup, MOBILE6.2 input parameters, etc. are on a compact disc (CD), included with the docket for this action, and are available from either EPA or the State. Other revisions to the mobile sources category were due to revised vehicle miles traveled (VMT) estimates that were provided to the State from the Denver Regional Council of Governments (DRCOG) which is the metropolitan planning organization (MPO) for the Denver area. The revised VMT were extracted from DRCOG's 2025 Regional Transportation Plan of April, 2002. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information, that was prepared in accordance with EPA guidance, and are acceptable to EPA.

(c) The State revised the maintenance demonstration used in the original Denver maintenance plan.

The original Denver CO redesignation maintenance plan, approved on December 14, 2001, 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). Additional policy guidance regarding EPA's MOBILE model was issued on November 12, 2002; this guidance notified Federal, State, and local agencies that the updated MOBILE6.2 model was available and was the recommended version of the model to be used. We note that throughout the development of the revised Denver CO maintenance plan, the State used the MOBILE6.2 model.

Our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without needing to revise the entire SIP or completing additional modeling if: (1) The SIP continues to demonstrate attainment or maintenance when the MOBILE5-based motor vehicle emission inventories are replaced with MOBILE6-based attainment and maintenance year inventories and, (2) the State can document that the growth and control strategy assumptions for non-motor vehicle emission sources continue to be valid and minor updates do not change the overall conclusion of the SIP. Our January 18, 2002 MOBILE6 policy also speaks specifically to CO maintenance plans on page 10 of the policy. The first paragraph on page 10 of the policy states ''* * * if a carbon monoxide (CO) maintenance plan relied on either a relative or absolute demonstration, the first criterion could be satisfied by documenting that the relative emission reductions between the base year and the maintenance year are the same or greater using MOBILE6 as compared to MOBILE5.'' For clarity, a ''relative demonstration'' for maintenance is based on the comparison of an attainment level of emissions to projected future year emissions. Maintenance is demonstrated when the projected future year emissions are at or

[1] ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas'', signed by D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

below the attainment level. This method was applicable to CO nonattainment areas classified as ''moderate'' with a design value of less than 12.7 ppm. An ''absolute demonstration'' for maintenance is based on modeling which shows that modeled CO emissions in future projected years will be less than 9 ppm (the CO NAAQS). For CO nonattainment areas, this requirement was applicable to areas classified as ''moderate'' with a design value greater than 12.7 ppm and to ''serious'' areas such as Denver.

As discussed above, the State prepared revised emission inventories for the years 2001, 2006, and 2013 using MOBILE6.2. The results of these calculations are presented in Table 8 ''Comparison of Attainment Area Inventory Changes and Percent for Attainment, Interim & Maintenance Years'' on page 16 of the revised Denver maintenance plan and are also presented below in Table IV–2:

TABLE IV–2

[Figures are in tons per day of CO]

Year	2001	2006	2013
Previously Approved Denver Maintenance Plan (based on MOBILE5a)*.	1083	1020 −5.8% from 2001	1041 −3.9% from 2001
Revised Denver Maintenance Plan (based on MOBILE6.2)**.	1911	1858 −2.8% from 2001	1373 −28.2% from 2001

* As approved by EPA on December 14, 2001 (66 FR 64751).
** As submitted by the Governor on October 15, 2003.

Based on this information we have determined that the revised maintenance plan meets the first criterion of our January 18, 2002 MOBILE6 policy for replacement of MOBILE5 emissions inventories and MVEB with MOBILE6.2 emissions inventories and MVEB. Specifically, the relative emissions reductions between the attainment year (2001) and the maintenance year (2013) are greater using MOBILE6.2 (−28.2%) than they were using MOBILE5 (−3.9%).

To address the second criterion of our January 18, 2002 MOBILE6 policy, the State documented that the growth and control strategy assumptions for non-motor vehicle emission sources are still valid and minor updates have not changed the overall conclusion of the SIP. The State's analysis is contained in section C.2 of the revised maintenance plan, entitled ''Methodology and Control Assumptions for Source Categories'', in which the State evaluated updated planning information from DRCOG, updated point source information, updated area and non-road source information, and specific updated information for Denver International Airport (DIA). We summarize the State's approach below.

For modeling of mobile sources emissions, the original maintenance plan relied on planning data from the 2020 DRCOG plan. The revised maintenance plan relies on data from the 2025 DRCOG plan. The changes in the modeling domain-wide VMT are presented in section C.2.(a) of the revised maintenance plan and Table IV–3 below:

TABLE IV–3

[Figures are in estimated Daily VMT]

Year	2001	2006	2013
Previously Approved Denver Maintenance Plan (based on MOBILE5a)*	58,156,000	66,760,000	77,187,000
Revised Denver Maintenance Plan (based on MOBILE6.2)**	61,362,264	68,123,584	77,750,300
Percent change	+5.2	+2.0	+0.7

* As approved by EPA on December 14, 2001 (66 FR 64751).
** As submitted by the Governor on October 15, 2003.

The comparison of daily VMT between the two maintenance plans, as shown in Table IV–3 above, indicates a minor change in planning assumptions.

Section C.2.(b) of the revised maintenance plan contains a discussion of the State's assessment of point source emissions. The State indicates that the prior analysis and growth assumptions used in the original maintenance plan are still valid for the revised maintenance plan. EPA notes that the State elected to base point source emissions for 2001 on actual emissions and emissions for 2006 and 2013 on projected actual emissions. This methodology is acceptable to us.[2] We also find the State's overall analysis of revised point source emissions acceptable.

For the non-road and area source emissions, the State relied upon updated demographic information from DRCOG. Several of the non-road and area source emissions are dependent on demographic data as a surrogate emission factor. DRCOG demographics are presented below from section C.1 (Table 5 and Table 6) of the revised maintenance plan and a further discussion is presented in the State's TSD.

[2] ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas'', signed by D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

TABLE IV–4
[Demographics]

Year	2001	2006	2013
Previously Approved Denver Maintenance Plan—Population*	2,364,000	2,616,000	2,889,000
Revised Denver Maintenance Plan—Population**	2,414,804	2,617,645	2,902,912
Percent change	+0.1	+0.1	+0.1
Previously Approved Denver Maintenance Plan—Households*	970,000	1,097,000	1,244,000
Revised Denver Maintenance Plan—Households**	957,780	1,050,166	1,172,902
Percent change	−1.3	−4.3	−5.7
Previously Approved Denver Maintenance Plan—Employment*	1,415,500	1,568,000	1,718,000
Revised Denver Maintenance Plan—Employment**	1,360,814	1,495,791	1,678,079
Percent change	−3.9	−4.6	−2.3

* As approved by EPA on December 14, 2001 (66 FR 64751).
** As submitted by the Governor on October 15, 2003.

This comparison of demographics between the two maintenance plans indicates a minimal level of change. Therefore, the planning and growth assumptions used in the original maintenance plan continue to be valid for the revised maintenance plan.

As discussed above, the State has satisfactorily addressed the requirements of our January 18, 2002 MOBILE6 policy for the substitution of MOBILE6.2-based inventories and MVEB for MOBILE5 based inventories and MVEB in the revised maintenance plan. The State has also documented that the growth and control strategy assumptions for non-motor vehicle emission sources remain valid and minor updates have not changed the overall conclusions of the Denver CO maintenance plan SIP element. We have concluded that the revised maintenance demonstration is approvable.

(d) Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Denver area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section F. ''Monitoring Network/ Verification of Continued Attainment'' of the revised Denver CO maintenance plan. In section F., the State commits to continue operating the CO monitors in the Denver area and to annually review this monitoring network and make changes as appropriate.

Also, in section F., 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 DRCOG. Since revisions to Denver's transportation improvement programs are prepared every two years, and must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the Denver Regional Air Quality Council (RAQC), the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements. We note that our final rulemaking approval renders the State's commitments federally enforceable. These commitments are also the same as those 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 G of the revised maintenance plan, the contingency measures for the Denver 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 RAQC and APCD to identify and evaluate potential contingency measures.)

The RAQC, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the CO NAAQS has occurred. The subcommittee will present recommendations to the RAQC within 120 days of notification and the RAQC will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the RAQC, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the 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 G.1 of the revised Denver CO maintenance plan include: (1) A 3.1% oxygenated fuels program from November 8th through February 7th, with a 2.0% oxygen content required from November 1st through November 7th, (2) reinstatement of the enhanced I/M program in effect before January 10, 2000, and (3) Transportation Control Measures (TCM) such as financial incentives for Ecopass, Auraria transit pass, and improved traffic signalization.

Based on the above, we find that the contingency measures provided in the State's revised Denver CO maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA. We note the contingency measures and methodology to implement them are the same as those we approved in the original maintenance plan.

(f) Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has 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 H of the revised Denver CO maintenance plan. In section H, the State commits to submit a revised maintenance plan by December, 2009 to correspond with our approval of the original maintenance plan on December 14, 2001 (66 FR 64751).

Based on our review of the components of the revised Denver CO maintenance plan, as discussed in items IV.(a) through IV.(f) above, we have

concluded that the State has met the necessary requirements for us to fully approve the revised Denver CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

With respect to maintenance plans, our conformity regulation requires that MVEB(s) must be established for the last year of the maintenance plan and may be established for any other years deemed appropriate (40 CFR 93.118).

Section E (''Carbon Monoxide Motor Vehicle Emissions Budget'') of the maintenance plan describes the applicable transportation conformity requirements and updated MVEB for the revised Denver CO maintenance plan. The State has only established a MVEB for the last year of the revised maintenance plan, 2013. Based on this choice, in order for a positive conformity determination to be made, transportation plan analyses for years after 2013 must show that motor vehicle emissions will be less than or equal to the MVEB in 2013. Our conformity regulation also allows the implementation plan (maintenance plan in this case) to quantify explicitly the amount motor vehicle emissions could be higher in 2013, while allowing a demonstration of maintenance of the NAAQS (40 CFR 93.124). This process is known as allocating all or a portion of the designated ''safety margin'' to the MVEB and is further described in 40 CFR 93.124 and below.

In addition, our January 18, 2002 MOBILE6 policy states that ''* * * regardless of the technique used for attainment or maintenance demonstrations, a more rigorous assessment of the SIP's demonstration may be necessary if a State decides to reallocate possible excess emission reductions to the motor vehicle emissions budget safety factor.'' Since the State decided to allocate available excess emissions reductions in the revised maintenance plan to the 2013 MVEB, we required a ''more rigorous assessment'' in order to ensure that even with the allocation of ''safety margin'' to the 2013 MVEB, the revised maintenance plan would continue to demonstrate maintenance. The ''more rigorous assessment'' is described in section E.3 of the maintenance plan, in the State's TSD, and below.

The original Denver CO maintenance plan, approved on December 14, 2001, contained a MVEB that was based on MOBILE5 and was 800 tons per day of CO for the Denver attainment/maintenance area for the years 2002 and beyond. The State did not allocate any ''safety margin'' as none was available for use. Section E.3 of the revised maintenance plan states that the prior 800 tons per day MVEB is removed from the SIP and is replaced by the new MVEB as described below.

In section E.3. of the revised maintenance plan, the State indicates that the revised maintenance plan establishes a MVEB for 2013 and beyond and that this MVEB is applicable to the boundaries of the Denver CO attainment/maintenance area. The revised maintenance plan indicates there is a 28.2% reduction in CO emissions between the attainment year of 2001 and the final maintenance year of 2013 (1911 tons per day in 2001 down to 1373 tons per day in 2013). As a result, a ''safety margin'' of CO emissions was identified. The ''safety margin'' and the allocation of these CO emissions is presented in Table 10 of the revised maintenance plan and is reproduced in our Table V–1 below.

TABLE V–1.—DERIVATION OF THE MVEB FOR 2013 AND ALLOCATION OF THE ''SAFETY MARGIN''

	Tons per day (TPD) of CO	Explanation
Total 2001 Attainment Year Inventory CO Emissions	1911	2001 Attainment year inventory from all sources that establishes the attainment level of emissions in the attainment/maintenance area.
Estimated 2013 Point and Area Emissions	248	Total estimated 2013 emissions from point and area sources.
Estimated 2013 Mobile Source Emissions	1125	Estimated 2013 mobile source emissions based on MOBILE6.2 and State control strategies.
Total 2013 Emission Inventory	1373	Total 2013 emissions from all source categories.
Potential 2013 ''Safety Margin''	[1] 538	This is the difference between the 2001 and 2013 total emission inventories.
Allowable 2013 Mobile Source Emissions	1539	This is the total mobile source emissions (after subtracting 2013 point and area emissions) that would still demonstrate maintenance of the CO NAAQS based on EPA's recommended ''more rigorous assessment.''
Avaiablle ''safety margin''	414	This is the difference between the allowable 2013 mobile source emissions (1539 TPD) and the estimated 2013 mobile source emissions (1125 TPD). This is the ''safety margin'' that may be allocated to the MVEB.
Portion of the ''safety margin'' reserved	19	This is the portion of the ''safety margin'' that the State is reserving to account for point and area source growth and other modeling uncertainties.
Amount of ''safety margin'' allocated to the 2013 MVEB	395	This is the difference between the available ''safety margin'' (414 TPD) and the reserved ''safety margin'' (19 TPD).
2013 and Beyond MVEB	1520	This is the 2013 MVEB (1125 TPD from mobile sources plus the allocated ''safety margin'' of 395 TPD).

[1] The State lists this value as 548 but it should be 538. This error does not affect the State's calculation of the MVEB for 2013.

As stated above, our January 18, 2002 MOBILE6 policy required a ''more rigorous assessment'' in order to ensure that even with the allocation of ''safety margin'' emissions to the 2013 MVEB, the revised maintenance plan would continue to demonstrate maintenance. We determined that a ''more rigorous assessment'' for the revised Denver CO maintenance plan would be an intersection modeling analysis similar to that performed by the State for the original EPA-approved Denver CO maintenance plan. The State's intersection analysis used a background CO concentration combined with CAL3QHC intersection (''hot spot'') modeling of the same six high-volume, high congestion intersections that were analyzed for the original maintenance plan.

The background CO concentration for each intersection used the second highest 8-hour maximum monitored value at a nearby CO ambient air quality monitor for the time period of 2000 through 2002. The CAL3QHC intersection modeling used 2013 MOBILE6.2 mobile sources emissions and DRCOG projected traffic data. The background concentration and results from the CAL3QHC modeling were them combined for each intersection. If the resulting concentration was greater than 9 ppm (the CO NAAQS), the background concentration was reduced by the necessary percentage to bring the total intersection value below 9 ppm. This was necessary for only one case, the Foothills/Arapahoe intersection in Boulder, where the initial background concentration was 4.3 ppm and the resulting intersection concentration was 9.27 ppm.

Since it is assumed that background concentrations are influenced by regional emissions of CO, the State, in order to determine the allowable regional emissions, reduced the base regional emissions (1911 tons per day in 2001) by the same percentage it had to reduce the initial background concentration.

Specifically, the State applied a percentage reduction of about 6.5% to 4.3 ppm and 1911 tons per day to arrive at values of 4.02 ppm and 1787 tons per day. To determine the available ''safety margin'', the State then subtracted 1373 tons per day (the total 2013 emission inventory) from 1787 tons per day to arrive at 414 tons per day. Of this amount, the State ''reserved'' 19 tons per day. Thus, the State applied 395 tons per day of the ''safety margin'' to the 2013 MVEB. The 2013 MVEB of 1520 tons per day results from the addition of the 2013 projected mobile source emissions (1125 tons per day) and the allocated ''safety margin'' (395 tons per day).

The State modeled the six intersections based on the MVEB of 1520 tons per day. The results are shown in Table 11 of the State's revised maintenance plan and are reproduced in Table V–2 below.

TABLE V–2.—INTERSECTION MODELING RESULTS (IN PARTS PER MILLION) USING THE EMISSIONS BUDGET OF 1520 TONS PER DAY

Intersection	Background (ppm)	CAL3QHC (ppm)	Total (ppm)
Broadway & Champa	5.00	1.47	6.47
Foothills & Arapahoe	3.98	4.97	8.95
1st & University	4.35	4.05	8.40
Hampden & University	3.52	4.83	8.35
Parker & Iliff	3.52	3.29	6.81
Arapahoe & University	3.52	4.62	8.14

The modeling results presented in the revised Denver CO maintenance plan and the State's TSD, and repeated in Table V–2 above, show that CO concentrations are not estimated to exceed the 9.0 ppm 8-hour average CO NAAQS for 2013. We have concluded that the State has satisfactorily addressed the requirements of our January 18, 2002 MOBILE6 policy for a more rigorous assessment of MVEBs and has also demonstrated maintenance of the CO NAAQS while using a transportation conformity MVEB of 1520 tons per day for 2013. Therefore, we are approving the transportation conformity MVEB of 1520 tons per day of CO, for the Denver attainment/maintenance area, for 2013 and beyond.

VI. 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. The revised Denver CO maintenance plan will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VII. Final Action

In this action, EPA is approving the revised Denver CO maintenance plan, that was submitted by the Governor on October 15, 2003, and we are also approving the revised transportation conformity motor vehicle emission budget for CO for the year 2013 and beyond.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 15, 2004 without further notice unless the Agency receives adverse comments by October 18, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The 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 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.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 3, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart G—Colorado

■ 2. Section 52.349 is amended by adding paragraph (i) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(i) Revisions to the Colorado State Implementation Plan, revised Carbon Monoxide Maintenance Plan for Denver, as adopted by the Colorado Air Quality Control Commission on June 19, 2003, State effective on August 30, 2003, and submitted by the Governor on October 15, 2003.

[FR Doc. 04–20793 Filed 9–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MD001–1001a; FRL–7813–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Maryland Equivalency by Permit Provisions; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a request from the Maryland Department of the Environment (MDE) for authority to implement and enforce state permit terms and conditions in place of those of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, with respect to the operations of MeadWestvaco Company's Luke Mill, located in Luke, Maryland. Thus, the EPA is hereby granting the MDE the authority to implement and enforce alternative requirements in the form of Clean Air Act (CAA) Title V permit terms and conditions after EPA has approved the State's alternative requirements. EPA is approving this request because it has found that the MDE has satisfied the requirements.

DATES: This rule is effective on November 15, 2004 without further notice, unless EPA receives adverse written comment by October 7, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by MD001–1001, by one of the following methods: