

with respect to this regulation. Instead, we have left it to the individual sponsors to exercise “those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interests of others” (*i.e.*, the “reasonable man” legal standard that has developed under case law) when deciding how much to spend for each background check, which commercial services to engage, or which databases to query. Most importantly, the Department does not dictate how sponsors should evaluate the results of these background checks, again allowing sponsors to apply the “reasonable man” standard. The proliferation of media reports of American children being sexually abused across the nation, however, has escalated the Department’s concern that sponsors may not be doing enough to protect the foreign visitors entrusted to their care.

Accordingly, the Department seeks information on the standards that other organizations use to deal with the safety and oversight of children to assess the suitability of volunteers or employees and the problems or benefits associated with adopting such practices. We also seek information on the identity of the service providers that current sponsors use, as well as the level and cost of the services obtained. Further, sponsors specifically are requested to recommend any Internet searches they may employ to supplement the formal background reports. Finally, we seek specific information from sponsors regarding their methods of evaluating the results of these reports, including identifying any acts that they believe render potential host families ineligible.

Public Law 105–251, The Volunteers for Children Act (“Act”), amended the National Child Protection Act of 1993, 42 U.S.C. 5119a, to allow organizations and businesses engaged in the care of other peoples’ children to use national fingerprint-based criminal history checks to screen out volunteers and employees with relevant criminal records. The Department seeks information on which, if any, State laws would consider a host family to be a “qualified entity” as defined in the Act, thereby requiring sponsors to request national fingerprint-based checks of such volunteers. We seek comment on the costs and administrative effort that would result from requiring sponsors to vet adult members of potential host families through the FBI’s national fingerprint database and whether any sponsors have been using this approach. To the extent possible, parties should comment on whether there is a

relationship between the cost of criminal background checks and the comprehensiveness and accuracy of the resulting reports. Sponsors should also provide information on the procedures they employ to obtain criminal background checks on adult members who join a household or children who turn 18 after an exchange visitor is placed in the home. The Department asks that sponsors also identify the criteria they use to determine when a frequent adult visitor in a home (*e.g.*, a college student, grown child, or acquaintance of an adult family member) should also be vetted through the criminal background check process.

The regulations also require sponsors to conduct an in-person interview with all family members residing in the home. The Department requests comment from sponsors regarding how they identify “all family members” residing in the home. They should specify whether they interview every adult who is vetted by a background check and whether they conduct multiple interviews if all family members are not available at the same time. Parties should comment on whether they believe that requiring such interviews to be conducted in the home provides additional insight into the family dynamic and its suitability to host an exchange student.

The Department has never attempted to define a “family” for purposes of being eligible to host a foreign high school student. We take notice, however, of the fact that problematic placements often occur in homes of families that do not include a school-aged child. As a result, we are considering regulations that require host families to be comprised of, at a minimum, one adult and one school-aged child (natural, adopted, or foster) living in the home. Although this configuration would eliminate from the pool of host families a number of caring single adults or couples, such as “empty-nesters,” the Department believes that the presence of a school-aged child in a home may provide compensating advantages. The Department seeks information from sponsors on the configurations of families that have provided either successful or problematic placements in the past. We ask the sponsor community also to suggest alternative minimum configurations or to recommend extenuating circumstances under which minimum configurations might not be necessary to ensure appropriate placements. The Department asks parties to comment on the extent to which imposing more specific definitions of a family could impact the

supply of potential host families and whether the increased suitability of selected families would compensate for the smaller pool of eligible host families.

Finally, the Department encourages parties to comment on aspects of host family screening and selecting in addition to those specifically raised. For example, sponsors may wish to share the methods they use in identifying potential host families. More importantly, they may wish to enumerate the methods that their experiences have found to be problematic or that they believe may encourage inappropriate adults to agree to host high school students. Sponsors are especially encouraged to share their best practices with the Department to provide the entire industry with guidance on how best to protect the health, safety, and welfare of high school-aged foreign exchange students.

Dated: August 27, 2009.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket: R02–OAR–2009–0508; FRL–8952–3]

Approval and Promulgation of Implementation Plans; Puerto Rico; Guaynabo PM10 Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Limited Maintenance Plan for the Municipality of Guaynabo nonattainment area in Puerto Rico and grant the request by the Commonwealth of Puerto Rico to redesignate the area from nonattainment to attainment for National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). On March 31, 2009, the Commonwealth of Puerto Rico submitted a Limited Maintenance Plan for the Guaynabo nonattainment area for approval and concurrently requested that EPA redesignate the Guaynabo nonattainment area to attainment for PM10.

DATES: Comments must be received on or before October 2, 2009.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2009-0508, by one of the following methods:

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

- *E-mail:* Werner.Raymond@epa.gov
- *Fax:* 212-637-3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA-R02-OAR-2009-0508. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 e-mail comment directly to EPA without going through <http://www.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 or 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>.

Docket: All documents in the docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that 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: Kirk Wieber at telephone number: (212) 637-3381, e-mail address: wieber.kirk@epa.gov, fax number: (212) 637-3901, or the above EPA Region 2 address.

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I. What Action Is EPA Proposing?

The Environmental Protection Agency (EPA) is proposing to approve the Limited Maintenance Plan (LMP) for the Municipality of Guaynabo nonattainment area (Guaynabo NAA) and concurrently proposing to redesignate the Guaynabo NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). The reader is referred to the Technical Support Document (TSD) that accompanies this proposal for more detailed information regarding EPA's evaluation of the LMP and redesignation request for the Guaynabo NAA.

II. Background

As required by the Clean Air Act (Act) in 1987, the EPA revised the particulate matter NAAQS from total suspended particles to PM10. The standard was changed to better protect public health and the environment.

The Act, as amended in 1990, required that all areas that have measured a violation of the NAAQS for PM10 before January 1, 1989 be designated nonattainment. On November 15, 1990 by operation of law, the Municipality of Guaynabo in Puerto Rico was designated nonattainment for PM10 and classified as moderate based on violations measured in 1987.

On November 14, 1993 the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a State Implementation Plan (SIP) revision which consisted of a PM10 SIP for the Municipality of Guaynabo. The Guaynabo PM10 SIP revision was reviewed and approved by EPA on May 31, 1995 and became effective on June 30, 1995 (60 FR 28333).

After completing the appropriate public notice and comment procedures, on March 31, 2009, the PREQB submitted to EPA a "Limited Maintenance Plan 24 Hour Particulate Matter (PM10) National Ambient Air Quality Standards and Redesignation Request for the Municipality of Guaynabo Moderate Nonattainment

Area State Implementation Plan Revision.”

III. Requirements for Redesignation

A. Clean Air Act Requirements for Redesignation of Nonattainment Areas

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the Act, and the General Preamble for the implementation of Title I of the Act (General Preamble) provide the criteria for redesignation. See 57 FR 13498 (April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, “Procedures for Processing Requests to Redesignate Areas to Attainment”. The criteria for redesignation are: (1) The Administrator has determined that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable SIP for the area under section 110(k) of the Act; (3) the state containing the area has met all requirements applicable to the area under section 110 and part D of the Act; (4) the Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and (5) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

B. The Limited Maintenance Plan (LMP) Option for PM10 Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM10 nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled “Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas,” referred to as the LMP option memo. The LMP option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary. To qualify for the LMP option: (1) The area should have attained the PM10 NAAQS; (2) the

average annual PM10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$); and (3) the 24 hour design value should be at or below 98 $\mu\text{g}/\text{m}^3$. If an area cannot meet this test, it may still be able to qualify for the LMP option if the average design value for the site is less than the site-specific critical design values. In addition, the area should expect only limited growth in on-road motor vehicle PM10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the Limited Maintenance Plan Option

The transportation conformity rule and the general conformity rule (40 CFR part 93; also see 40 CFR part 51) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area. While EPA’s LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM10 NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, federal actions subject to the general conformity rule could be considered to satisfy the “budget test” specified in 40 CFR 93.158(a)(5)(i)(A) as these budgets also are essentially considered to be unlimited.

IV. Review of the Puerto Rico Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plan

A. Has the Guaynabo Nonattainment Area (NAA) Attained the Applicable NAAQS?

There are two separate NAAQS for PM10, an annual standard of 50 $\mu\text{g}/\text{m}^3$ and a 24-hour standard of 150 $\mu\text{g}/\text{m}^3$. States must demonstrate that an area has attained the PM10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database. EPA determined that the Guaynabo NAA attained the PM10 NAAQS by its due date of December 31, 1994.

During the time period of 1995–2000, the EPA published in the **Federal Register** various notices identifying those moderate PM10 nonattainment areas (those designated in 1990 by operation of law) that did not attain by the December 31, 1994 attainment date. The Municipality of Guaynabo was not included in any of those notices. Therefore, by inference, EPA has determined that the Municipality of Guaynabo has attained the PM10 NAAQS based on air quality data.

Based on the most recent six years of air quality data in AQS, from 2002–2007, the area continues to be in compliance with both of the PM10 NAAQS. EPA notes that during the period 2002–2007, the Guaynabo NAA had experienced several exceedances of the 24-hour standard as a result of sahara dust events influencing air quality data. In an April 28, 2008 letter to the EPA, Puerto Rico requested that the EPA exclude air monitoring data from a number of days during 2002–2007. Almost all of these exceedances were flagged by Puerto Rico as exceptional events due to sahara dust events under EPA’s Natural Events Policy. Based on the information provided by Puerto Rico about these events, in a September 25, 2008 letter from EPA to Puerto Rico, EPA concluded that many of the exceedances that occurred were due to sahara dust natural events. EPA concurred on the flagged days in AQS that were supported by information from Puerto Rico. EPA determined that the Guaynabo NAA was eligible for the LMP option when considering the flagged data that was influenced by exceptional events. Though not relevant to this redesignation request, EPA also notes that the Guaynabo NAA, and all of Puerto Rico, has always attained the more protective PM2.5 NAAQS.

B. Does the Guaynabo Nonattainment Area (NAA) Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act (Act)?

Section 110(k) of the Act outlines EPA's actions on SIP submittals. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. As stated above, on May 31, 1995, EPA approved the Guaynabo moderate NAA plan which included a PM10 emissions inventory, a control strategy including reasonably available control measures (RACM) and reasonably available control technology (RACT), the demonstration that the Municipality of Guaynabo PM10 nonattainment area will attain the PM10 NAAQS by December 31, 1994 and maintain the PM10 NAAQS through 1999, New Source Review (NSR) permit provisions and contingency measures. See 60 FR 28333.

C. Has Puerto Rico Met All Applicable Requirements Under Section 110 and Part D of the Act?

Section 107(d)(3)(E) of the Act requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Subchapter 1, Part D (Part D) of the Act for an area to be redesignated to attainment. EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Puerto Rico meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—NSR permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, EPA's review of the SIP shows that Puerto Rico has addressed all requirements under section 110(a)(2) of the Act as it relates to PM10 requirements. Further, in 40 CFR 52.2722, EPA has approved Puerto Rico's plan for the attainment and maintenance of the national standards under Section 110.

(2) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM10 nonattainment areas must meet the general provisions of Subpart 1 and the specific PM10 provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Guaynabo NAA.

(3) Part D, Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). Section 172(c)(2) of the Act requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Since EPA determined that the Guaynabo NAA was in attainment of the PM10 NAAQS by 1997, no further showing of RFP or quantitative milestones is necessary.

(4) Part D, Subpart 1, Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the Guaynabo PM10 nonattainment area. In addition, the LMP option memo states that for inventory purposes, the state is only required to submit an attainment inventory to EPA that is based on one of the years of monitoring data which shows attainment. There is no requirement to project emissions over the maintenance period. This means if 2002 is a calendar year which has monitoring data that demonstrates attainment, the 2002 base year inventory can be used as the attainment year

inventory and no projection inventories are required over the years of the maintenance period. Only calendar year 2002 PM10 annual emissions summary data are required. In addition, this inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include emissions during the time period associated with the monitoring data showing attainment. The period of violation-free PM10 monitoring data for the Municipality of Guaynabo is 2002–2007. Therefore, 2002 is an appropriate year to select for an attainment inventory. EPA has determined that the 2002 base year inventory emissions inventory is current, accurate and comprehensive and therefore meets the requirements of Section 172(c)(3) of the Act and attainment inventory requirements outlined in the August 9, 2001 memorandum.

(5) Section 172(c)(5)—New Source Review

The Clean Air Act Amendments of 1990 contained revisions to the NSR program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the Act). The Part D NSR rules for PM10 nonattainment areas in Puerto Rico were approved by EPA on May 31, 1995 (60 FR 28333).

However, on December 31, 2002, EPA promulgated revisions to the NSR regulations. These revisions include among other things: (1) A new actual-to-projected-actual applicability test for existing sources; (2) a new Plant-wide Applicability Limitation option for existing major stationary sources with the ability to manage facility-wide emissions without triggering major NSR; and (3) new recordkeeping requirements for sources that avoid NSR review. Please note that there have been subsequent additional proposed/final revisions to the NSR regulations. However, some of these changes have either not yet been finalized, have been stayed by the Courts, or are subject to litigation and are not in effect yet. The December 31, 2002 revised regulations also required states to adopt these changes into their own state NSR rules and submit this revised rule to EPA no later than January 2, 2006.

EPA has determined that Puerto Rico has not revised its regulations to be consistent with the NSR reform requirements applicable to a moderate PM10 nonattainment area, i.e., for the

Municipality of Guaynabo. However, should Puerto Rico's redesignation request for the Guaynabo NAA be approved by EPA, the NSR reform requirements will become unnecessary. The redesignation process will eliminate the requirement for Puerto Rico to submit a nonattainment NSR SIP for the Municipality of Guaynabo.

(6) Section 172(c)(7) Compliance With Section 110(a)(2) of the Act: Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area. The PREQB operates two PM10 State and Local Air Monitoring Stations (SLAMS) in the Guaynabo NAA. Both monitoring sites meet EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E. In the LMP submitted by Puerto Rico, section 3.e.iv contains Puerto Rico's commitment to continue operation of the monitoring network.

(7) Section 172(c)(9)—Contingency Measures

The Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. Since the Guaynabo NAA attained the NAAQS for PM10 by the applicable attainment date of December 31, 1994, contingency measures are no longer required under Section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under Section 175A(d). We describe the contingency provisions which Puerto Rico provided in the Guaynabo LMP later in this proposed action.

(8) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include: (a) Provisions to assure that RACM was implemented by December 10, 1993; (b) either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable; (c) quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and (d) provisions to assure that the control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors except where the Administrator determined that such sources do not contribute significantly to PM10 levels which exceed the NAAQS in the area. These provisions were fully approved into the SIP upon EPA approval of the PM10 moderate area plan for the Guaynabo NAA on May 31, 1995 (60 FR 28333).

D. Has Puerto Rico Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the state must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates,

production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic. Permanent and enforceable control measures in the Guaynabo NAA SIP include RACM and RACT. The Puerto Rico RACM analysis for the Guaynabo NAA concentrated on measures to control emissions from fugitive dust sources such as re-entrained dust from paved roads, unpaved roads and parking lots, construction sites and other areas from which windblown dust may emanate. The RACMs were implemented by the Commonwealth of Puerto Rico through a Memorandum of Understanding (MOU) between the Puerto Rico Environmental Quality Board and the following government entities:

- The Puerto Rico Department of Transportation and Public Works and the Executive Director of the Highway Authority to maintain and control the reconstruction of existing roads and the construction of new roads;
- The Municipality of Guaynabo to pave and maintain the streets, roads and parking areas located in the Municipality of Guaynabo; and
- The Puerto Rico Port Authority to pave and maintain the streets, roads, and parking areas that lead into the port area in Puerto Nuevo, Guaynabo and San Juan.

The control measures established through the MOUs are consistent with RACM requirements and have been implemented for at least 10 years. Table 1 contains a list of RACM implemented in Guaynabo. These control measures were approved into the SIP, and they are both permanent and federally enforceable. See 60 FR 28333 (May 31, 1995).

TABLE 1—GUAYNABO NAA, REASONABLY AVAILABLE CONTROL MEASURES

Control measure	State agency	Authority
Reduce particle matter by curb paving or stabilizing shoulders for the following highways PR-5, PR-22, PR-24, PR-165 located in the Municipality of Guaynabo.	Department of Transportation and Public Works and Puerto Rico Highway Authority.	Rule 423(C) RCAP.
Reduce fugitive dust from paved roads by the operation of sweeping machines in the highways listed above at least once per week.		
Reduce particulate matter by paving or chemically stabilize any unpaved roads or parking areas and any access points where unpaved traffic surfaces adjoin paved roads in their jurisdiction.	Municipality of Guaynabo.	Rule 423(C) RCAP.
Reduce fugitive dust from paved roads by the operation of sweeping machines in the roads, streets and parking areas above at least two times per week.		
Reduce particulate matter by paving or chemically stabilize any unpaved roads or parking areas and any access points where unpaved traffic surfaces adjoin paved roads in the following areas: port zone of Puerto Nuevo, Guaynabo, and San Juan.		
Reduce fugitive dust from paved roads by the operation of sweeping machines in the roads, streets and parking areas above at least two times per week.	Port Authority	Rule 423(C) RCAP.

TABLE 1—GUAYNABO NAA, REASONABLY AVAILABLE CONTROL MEASURES—Continued

Control measure	State agency	Authority
Implementation of engineering good practice for the control of particulate matter emissions during the construction of future projects in port zone of Puerto Nuevo, Guaynabo and San Juan.		

The emission inventory for the Guaynabo NAA identified the sources considered in the RACT analysis. Several minor sources were excluded from the analysis because additional control technology for these sources was determined to be unreasonable since they do not contribute significantly to the modeled exceedances of the PM10 NAAQS. However, some sources located outside the Guaynabo nonattainment area were considered in the RACT analysis because they contribute significantly to the modeled exceedances.

The categories included in Puerto Rico’s RACT control strategy are: electric utilities, grain handling and processing facilities, petroleum refineries, asphalt plants, and quarries and rock crushing operations.

The adopted control strategies for stationary sources approved by EPA provided the necessary control measures to attain and maintain the PM10 NAAQS for the Guaynabo NAA. The RACT control strategies are incorporated into Rule 423 of the Puerto Rico Regulations of Control for Atmospheric Pollution (RCAP). Rule 423 is permanent and federally enforceable. The PREQB adopted revisions to Rules 102 and 423 of the Puerto Rico RCAP in support of its redesignation request and development of a maintenance plan for the Municipality of Guaynabo. The revisions to Rule 423 consist of administrative changes such as a revision to a definition and the title of Rule 423. Revisions to Rule 423 also included the removal of certain provisions applicable to sand, soda ash, cement and dust clinkers. These provisions, adopted by Puerto Rico after Rule 423 of the RCAP was approved into the SIP, had the effect of limiting the applicability of the PM10 SIP to these sources. PREQB’s recent adoption to remove these provisions applicable to these sources now makes the rule consistent with the previous federally approved version of Rule 423. See 62 FR 3211 or the TSD for a more detailed discussion related to this provision.

Finally, EPA has determined that areas that qualify for the LMP will meet the NAAQS, even under worst case meteorological conditions. Under the LMP policy, the maintenance

demonstration is presumed to be satisfied if an area meets the qualifying criteria. Thus, by qualifying for the LMP option, Puerto Rico has demonstrated that the air quality improvements in the Guaynabo area are the result of permanent emission reductions and not a result of either economic trends or meteorology. A description of the LMP qualifying criteria and how the Guaynabo area meets these criteria is provided in the following section.

E. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

In this action, we are proposing to approve the Puerto Rico LMP for the Guaynabo NAA in accordance with the principles outlined in the LMP option memo. Upon the effective date of the final action of this proposal, the area will have a fully approved maintenance plan.

F. Has Puerto Rico Demonstrated That the Guaynabo NAA Qualifies for the LMP Option?

The LMP option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. As stated previously in Section IV.A., EPA has determined that the Guaynabo NAA has been in attainment of the PM10 NAAQS since 1997 and continues to meet the PM10 NAAQS for the period 2002–2007. Second, the average design value (ADV) for the past 5 years of monitoring data must be at or below the critical design value (CDV). The CDV is a margin of safety value and is the value at which an area has been determined to have a 1 in 10 probability of exceeding the NAAQS. The LMP option memo provides two methods for reviewing monitoring data for the purpose of qualifying for the LMP option. The first method is a comparison of a site’s ADV with the CDV of 98 µg/m³ for the 24-hour PM10 NAAQS and 40 µg/m³ for the annual PM10 NAAQS. A second method that applies to the 24-hour PM10 NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past 5 years of monitoring data. The ADV for the 24-hour PM10 NAAQS for Guaynabo, based on data from all monitors located

in the Municipality of Guaynabo for the years 2002–2006, is 85 µg/m³. This value falls below the 24-hour CDV provided in the LMP option memo of 98 µg/m³. Therefore, Guaynabo meets the design value criteria outlined in the LMP option memo.

Third, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP option memo. Using the methodology outlined in the memo, based on monitoring data for the period 2002–2006, EPA has determined that the Guaynabo NAA passes the motor vehicle regional emissions analysis test. The monitoring data for the period 2002–2006 shows that Guaynabo has attained the NAAQS for PM10, and the 24-hour ADV and the annual ADV in Guaynabo are less than the site specific 24-hour PM10 CDV and the national annual CDV respectively. Finally, the area has met the regional vehicle emissions analysis test. Thus, the Guaynabo NAA area qualifies for the Limited Maintenance Plan option described in the LMP option memo. The LMP option memo also indicates that once a state selects the LMP option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM10 concentrations enough to requalify for the LMP. One possible approach the state could take is to implement contingency measures. In section E of the Limited Maintenance Plan, Puerto Rico commits to evaluate, on an annual basis, the LMP criteria for the Guaynabo NAA. For these reasons and reasons explained below, we are proposing to approve the LMP for the Guaynabo NAA and the State’s request to redesignate the Municipality of Guaynabo, PR from nonattainment to attainment for PM10.

G. Does Puerto Rico Have an Approved Attainment Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

Pursuant to the LMP option memo, the state’s approved attainment plan should include an emissions inventory (attainment inventory) which can be used to demonstrate attainment of the NAAQS. The attainment inventory should represent emissions during one

of the years during the same five year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every three years to ensure emissions growth is incorporated in the attainment inventory if necessary.

In this instance, Puerto Rico completed an attainment year inventory for the calendar year 2002. EPA has reviewed the 2002 attainment year emissions inventory and determined that it is current, accurate and complete. In addition, the emissions inventory submitted with the Limited

Maintenance Plan for the calendar year 2002 is representative of the level of emissions during the time period used to calculate the average design value since 2002 is one of the years during the five year period used to calculate the design value.

2002 GUAYNABO, PUERTO RICO PM10 ATTAINMENT EMISSION INVENTORY
[In tons per year]

Point	Area	Off-highway mobile	Highway mobile	Total
2,365	398*	130.5	49	2,942.5

* Area source emissions inventory includes emissions from paved and unpaved roads.

H. Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network, in Accordance With 40 CFR Part 58?

The PM10 monitoring network for the Municipality of Guaynabo consists of two monitors. These sites are identified as (1) Site Number 7, located at the USGS and Water Resources Building and (2) Site 24, located at the Electrical Substation. These monitors are in close proximity to each other and are representative of the air quality for the area. Also, the Commonwealth of Puerto Rico has been affected by natural events such as the dust from the Sahara desert transported across the Atlantic Ocean and volcanic ash from the Soufriere Hills located on Montserrat Island. These natural events affect the air quality in the Municipality of Guaynabo. Once flagged and justified, these natural events can be excluded as part of the determination of attainment with the PM10 NAAQS in accordance with the provisions of "Treatment of Data Influenced by Exceptional Events; Final Rule," published March 22, 2007 and Appendix K to 40 CFR Part 50.

The monitoring network was developed and has been maintained in accordance with federal siting and design criteria in 40 CFR Part 58, Appendices D and E and in consultation with Region 2. In the LMP submitted by Puerto Rico, section 3.e.iv contains Puerto Rico's commitment to continue to operate its monitoring network to meet EPA requirements.

I. Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A(d) of the Act states that a maintenance plan must include contingency provisions, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment.

As explained in the LMP option memo, these contingency measures do not have to be fully adopted at the time of redesignation. In compliance with the requirements of section 172(c)(9) of the Act, Puerto Rico included contingency measures in the PM10 SIP for the Municipality of Guaynabo approved by EPA on May 31, 1995.

The contingency measures established in Rule 423(D) of the RCAP will continue to be in place for the period established by the LMP policy. The following are the contingency measures that are in place and will continue to be in place for the Municipality of Guaynabo:

(1) The Puerto Rico Department of Transportation shall collect data on silt content and dust loadings for highways in Guaynabo Municipality using EPA procedures for better estimating PM10 emissions following AP-42 procedures.
(2) Guaynabo Municipality shall require vegetation, chemical stabilization, or other abatement of wind erodible soils.

(3) Diesel fuel oil with a sulfur in fuel level less than 0.05% shall be used by all vessels while they operate in San Juan Bay which is specifically defined as the navigable waters south of the imaginary line connecting Punta del Morro and Isla de Cabras.

(4) No visible emissions from any vessel shall be permitted in the San Juan Bay except as provided in Rule 403 of this Regulation.

(5) The Puerto Rico Port Authority shall implement a street cleaning program or other program to prevent dust from collecting on paved surfaces in their jurisdiction.

(6) The San Juan Municipality must revise the dust and fire abatement programs at its sanitary landfill in order to establish additional pollution abatement control strategies.

EPA believes that the contingency measures in Guaynabo's Limited

Maintenance Plan meet the requirements for contingency measures as outlined in the Limited Maintenance Plan Option memo.

J. Has Puerto Rico Met the Conformity Requirements?

(1) Transportation Conformity

Under the LMP option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP option memo are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the Commonwealth must document and ensure that: (a) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (b) The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (c) Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (d) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (e) Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113; (f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (g) Project sponsors and/or operators provide written

commitments as specified in 40 CFR 93.125.

On May 12, 2009, EPA initiated an adequacy review of the Guaynabo LMP for transportation conformity purposes in accordance with 40 CFR 93.118(f), in a posting on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>. As stated above, LMP budgets are unconstrained and consequently, the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. The comment period for the adequacy posting for the Guaynabo LMP ended on June 11, 2009. EPA did not receive any comments on this posting.

(2) General Conformity

For federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that "the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State or Commonwealth agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP." 40 CFR 93.158(a)(5)(i)(A). The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the Commonwealth and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Puerto Rico has chosen not to include specific emissions allocations for federal projects that would be subject to the provisions of general conformity.

V. What Are EPA's Conclusions?

EPA has determined that the PM10 Limited Maintenance Plan submitted by the PREQB on March 31, 2009 for the Municipality of Guaynabo meets all Clean Air Act provisions and EPA policy and guidance, including the criteria outlined in EPA's LMP option memo. Therefore, EPA is proposing to

approve the PM10 Limited Maintenance Plan for the Municipality of Guaynabo and all of its components as they were submitted by PREQB on March 31, 2009. Specifically, EPA is proposing to approve the 2002 PM10 attainment emissions inventory, attainment plan, maintenance demonstration, contingency measures, monitoring network, transportation conformity analysis and revisions to Rules 102 and 423 of the Puerto Rico RCAP.

EPA is also proposing to approve the redesignation request for the Municipality of Guaynabo submitted by the PREQB on March 31, 2009 based on EPA's determination that the supporting documentation for redesignation satisfies all Clean Air Act requirements and EPA's policy and guidance, including the criteria outlined in EPA's redesignation guidance memorandum.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and 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 Clean Air Act; 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

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 18, 2009.

Barbara A. Finazzo,

Acting Regional Administrator, Region 2.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 42, and 49

[FAR Case 2008-016; Docket 2009-0032, Sequence 1]

RIN 9000-AL45

Federal Acquisition Regulation; FAR Case 2008-016, Termination for Default Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),