EPA Response: EPA disagrees with the commenter's claim that the Colorado SIP has not been revised to conform with the NAAQS for PM<sub>10</sub>. On the contrary, Colorado has developed nonattainment plans regulating sources of PM<sub>10</sub> for all of the State's PM<sub>10</sub> nonattainment areas designated upon enactment of the 1990 Amendments. All of those plans have been approved in at least some form (i.e., full, conditional, partial, or limited approval) by EPA. Further, the State has updated its nonattainment new source review (NSR) and prevention of significant deterioration (PSD) permitting requirements to apply to new and modified major sources of PM<sub>10</sub>, and these programs require compliance with the NAAQS (including the PM<sub>10</sub> NAAQS) as a condition of permit issuance. EPA approved these revisions to the State's permitting program as conforming to the PM<sub>10</sub> NAAQS on June 17, 1992 (57 FR 26997).

However, the State has retained some requirements pertaining to sources of TSP, as follows: The State's PSD permitting program applies to new and modified major sources of particulate matter (of which TSP is a subset), as well as PM<sub>10</sub>. Regulation of such sources of particulate matter is required by the Federal PSD permitting regulations. Also, the State regulates minor sources of TSP in its minor NSR permitting regulations, and the State regulations still include the previous Federal ambient air quality standard for TSP. However, on June 24, 1993, when the State adopted the PM<sub>10</sub> NAAQS into its regulations, the State temporarily suspended the TSP ambient standard while the State determines whether to retain, revise, or delete the TSP standard. In any case, the State always has the option of adopting requirements that are more stringent than the Federal requirements, as provided by section 116 of the Act. Further, EPA has, in general, approved State provisions that are more stringent than the Federal requirements as part of the SIP if such provisions can be considered to control NAAQS (i.e., criteria) pollutants or their precursors. Colorado's regulation of TSP under the minor NSR program and its TSP ambient air quality standard will control PM<sub>10</sub> emissions, since PM<sub>10</sub> is a component of TSP. Thus, EPA believes there is legal basis for the State retaining some controls on TSP in its SIP.

In regard to the comment that TSP is not a regulated pollutant, the commenter is correct. As pointed out in a June 14, 1993 memorandum from John Seitz, some EPA guidance documents have incorrectly used the term "TSP" interchangeably with "particulate

matter emissions." However, TSP is not a regulated air pollutant as defined in 40 CFR 70.2. Particulate matter emissions (of which TSP is a component), on the other hand, are considered to be regulated pollutants as defined in 40 CFR 70.2. The EPA notes that Colorado's definition of "regulated air pollutant" in its part 70 operating permit regulations includes both particulate matter and PM<sub>10</sub>, so there is no flaw relative to this issue which would prevent interim approval of Colorado's PROGRAM. If Colorado also considers TSP as a regulated pollutant under its PROGRAM, EPA would have no concerns with this issue as states' part 70 programs are generally allowed to be more stringent than the corresponding Federal requirements. Last, EPA does not believe it is violating the regional consistency rules in 40 CFR 56.1–56.7 by allowing a State to be more stringent than the corresponding Federal requirements. As discussed above, EPA believes section 116 of the Act provides states with the option of adopting requirements that are more stringent than the Federal requirements. In fact, it has generally been a national policy to allow state rules to be more stringent than the Federal requirements, except in those cases where the Act or the corresponding Federal regulations prohibit a state rule from being more stringent. (For example, some of the operational flexibility rules in 40 CFR 70.4(b)(12) are a required element of states' part 70 programs, and states do not have the option of prohibiting such flexibility.) Thus, in this case, EPA believes it has followed its regional consistency rules, and the fact that Colorado's SIP still regulates TSP does not impact EPA's ability to grant interim approval to Colorado's PROGRAM.

*Comment #9:* The commenter expressed concern that EPA was requiring the State of Colorado to authorize automatic annual increases in spending to administer the State's PROGRAM. In addition, the commenter stated that "Colorado may, in the future, charge whatever fees it wants in whatever combination it wishes, with or without any specific, annual fee escalation mechanism, so long as it can run the aspects of the Program set forth in Part 70.9(b)(1)."

*EPA Response:* EPA disagrees with the commenter's assertion that EPA was requiring Colorado to authorize automatic annual increases in spending. EPA simply wished to clarify that, regardless of the amount of money the State collects to adequately fund all reasonable direct and indirect costs of the PROGRAM, the State Legislature retains spending authority and must annually authorize the spending of the necessary fee revenue by the Permitting Authority. If adequate spending authority is not authorized, and the State is therefore unable to fund all the reasonable direct and indirect costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 PROGRAM, impose sanctions and implement a Federal permitting program. This language was intended to clarify EPA's position and was not considered an issue for interim approval. In addition, EPA agrees with the commenter's statement regarding Colorado's authority to levy fees in whatever combination it wishes so long as the State can adequately fund its PROGRAM.

*Comment #10:* The commenter requested that EPA's final interim approval of the Colorado PROGRAM clearly reflect OAQPS guidance stating that preconstruction permits containing federally enforceable section 112(g) conditions need not be reopened subsequent to Colorado's adoption of EPA's final section 112(g) rule.

EPA Response: The June 28, 1994 memorandum entitled "Guidance for Initial Implementation of Section 112(g)" provides that "if the State issues a final, federally enforceable preconstruction permit before the final section 112(g) rule is promulgated, the EPA recommends relying on that permit rather than requiring the permit to be reopened as a result of the final rule, so long as the permit reflects compliance with the requirements of section 112(g)." However, EPA wishes to clarify the previous guidance statement by emphasizing that it cannot unequivocally declare that all existing federally enforceable preconstruction permits will not need to be reopened. EPA does not know which permits, if any, will need to be reopened until after the section 112(g) rule is promulgated, and this will be a case-by-case determination. Until the section 112(g)rule is final, EPA will expect states to implement the section 112(g) requirements using the guidance that has been provided.

*Comment #11:* The commenter stated that Colorado's PROGRAM allows minor New Source Review changes to be processed as minor permit modifications under Regulation No. 3, part C, consistent with EPA's proposed interim approval criteria published at 59 FR 44572 (August 29, 1994), and that EPA's proposed interim approval correctly leaves intact Colorado's procedures for minor permit modifications. The commenter also stated that EPA should not lose sight of the importance of this flexibility