

## Regulatory Flexibility Act

The Secretary of Defense and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 501–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

## Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

## List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 28, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

August 26, 2004.

**William J. Carr,**

*Acting Deputy Under Secretary (Military Personnel Policy).*

■ For the reasons set out above, 38 CFR part 21, subpart H, is amended as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart H—Educational Assistance Test Program

■ 1. The authority citation for part 21, subpart H, continues to read as follows:

**Authority:** 10 U.S.C. ch.107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

#### 21.5820 [Amended]

■ 2. Section 21.5820 is amended by:

■ a. In paragraph (b)(1), removing “2002–03” and adding, in its place, “2003–04”, and by removing “\$3,849” and adding, in its place, “\$4,219”.

■ b. In paragraph (b)(2)(ii), removing “2002–03” and adding, in its place, “2003–04”.

■ c. In paragraphs (b)(2)(ii)(A) and (b)(3)(ii)(A), removing “\$427.67” and adding, in each place, “\$468.78”, and by removing “\$213.84” and adding, in each place, “\$234.39”.

■ d. In paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B), removing “\$14.26” and adding, in each place, “\$15.63”, and by removing “\$7.13” and adding, in each place, “\$7.81”.

■ e. In paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C), removing “3 cents” and adding, in each place “2 cents”, and by removing “6 cents” and adding, in each place “1 cent”.

■ f. In paragraph (b)(3)(ii) introductory text, removing “2002–03” and adding, in its place, “2003–04”.

#### 21.5822 [Amended]

■ 3. Section 21.5822 is amended by:

■ a. In paragraphs (b)(1)(i) and (b)(2)(i), removing “\$959” and adding, in each place, “\$1,051”, and by removing “2002–03” and adding, in each place, “2003–04”.

■ b. In paragraphs (b)(1)(ii) and (b)(2)(ii), removing “\$479.50” and adding, in each place, “\$525.50”, and by removing “2002–03” and adding, in each place, “2003–04”.

[FR Doc. 04–23756 Filed 10–22–04; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[CO–001–0077a; FRL–7815–5]

### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes, Steamboat Springs

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final rule action to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado on July 31, 2002, for the purpose of redesignating the Steamboat Springs, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) under the 1987 standards. The Governor’s submittal, among other things, documents that the Steamboat Springs area has attained the PM<sub>10</sub> national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area

demonstrating maintenance of the PM<sub>10</sub> NAAQS for ten years. On August 5, 2004, EPA proposed to approve (69 FR 47399) in parallel with a direct final rule (69 FR 47366) Colorado’s Steamboat Springs submittal in conjunction with Colorado’s submittal to redesignate Lamar, Colorado. However, adverse comments pertaining to the Lamar PM<sub>10</sub> redesignation were received during the public comment period, therefore, EPA withdrew the approval of Lamar and Steamboat Springs. Since no comments were received during the public comment period on the approval of redesignating Steamboat Springs, EPA is acting to approve the redesignation in this final rule. EPA is approving this redesignation request and maintenance plan for Steamboat Springs because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Upon the effective date of this approval, the Steamboat Springs area will be designated attainment for the PM<sub>10</sub> NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective November 24, 2004.

**ADDRESSES:** EPA has established a docket for this under Docket ID No. CO–001–0077a. Some information in the docket is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available 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 docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Libby Faulk, Air and Radiation Program, U.S. EPA, Region VIII, 999 18th Street, Ste. 300 (8P–AR), Denver, Colorado, 80202–2466. Telephone: (303) 312–6083. E-mail Address: [faulk.libby@epa.gov](mailto:faulk.libby@epa.gov).

**SUPPLEMENTARY INFORMATION:** 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 *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* mean the State of Colorado, unless the context indicates otherwise.

## Table of Contents

- I. EPA's Final Action
  - A. What Action Is EPA Taking in This Direct Final Rule?
- II. Summary of Redesignation Request and Maintenance Plan
  - A. What Requirements Must Be Followed for Redesignation to Attainment?
  - B. Does the Steamboat Springs Redesignation Requests and Maintenance Plan Meet the CAA Requirements?
  - C. Have the Transportation Conformity Requirements Been Met?
  - D. Did Colorado Follow the Proper Procedures for Adopting this Action?
- III. Background
- IV. Consideration of CAA section 110(l)
- V. Statutory and Executive Order Reviews

## I. EPA's Final Action

### A. What Action Is EPA Taking in This Direct Final Rule?

We are approving the Governor's submittal of July 31, 2002, that requests redesignation for the Steamboat Springs nonattainment area to attainment for the 1987 PM<sub>10</sub> standards. Included in Colorado's submittal are changes to the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)" which we are approving, under section 110 of the CAA, into Colorado's SIP. We are also approving the maintenance plan for the Steamboat Springs PM<sub>10</sub> nonattainment area, which was submitted with Colorado's July 31, 2002 redesignation request. We are approving this request and maintenance plan because Colorado has adequately addressed all of the requirements of the CAA for redesignation to attainment applicable to the Steamboat Springs PM<sub>10</sub> nonattainment area. Upon the effective date of this action, the Steamboat Springs area designation status under 40 CFR Part 81 will be revised to attainment.

## II. Summary of Redesignation Request and Maintenance Plan

### A. What Requirements Must Be Followed for Redesignations to Attainment?

In order for a nonattainment area to be redesignated to attainment, the

following conditions in section 107(d)(3)(E) of the CAA must be met:

(i) We must determine that the area has attained the NAAQS;

(ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the CAA;

(iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such an area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992 guidance entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" outlines how to assess the adequacy of redesignation requests against the conditions listed above.

The following is a brief discussion of how Colorado's redesignation request and maintenance plan meets the requirements of the CAA for redesignation of the Steamboat Springs area to attainment for PM<sub>10</sub>.

### B. Does the Steamboat Springs Redesignation Request and Maintenance Plan Meet the CAA Requirements?

#### i. Attainment of the PM<sub>10</sub> NAAQS

A state must demonstrate that an area has attained the PM<sub>10</sub> NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum PM<sub>10</sub> concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, the three most recent years of complete air quality data must be used.

Colorado operates two PM<sub>10</sub> monitoring sites in the Steamboat Springs PM<sub>10</sub> nonattainment area. Colorado submitted ambient air quality data from both monitoring sites which demonstrate that the area has attained the PM<sub>10</sub> NAAQS. These air quality data were quality assured and placed in AIRS. Two exceedances of the 24-hour PM<sub>10</sub> NAAQS were measured in 1993 and 1996. However, the 3-year average

of estimated exceedances remained below 1.0 (per year) (40 CFR Part 50.6) and therefore did not result in a violation of the 24-hour PM<sub>10</sub> NAAQS. The three most recent years of data for the area (2000–2002) are complete (*i.e.*, data are available for at least 75% of the scheduled PM<sub>10</sub> samples per quarter) with no recorded violations. The annual PM<sub>10</sub> NAAQS has never been exceeded in Steamboat Springs. We believe that Colorado has adequately demonstrated, through ambient air quality data, that the PM<sub>10</sub> NAAQS have been attained in the Steamboat Springs area.

#### ii. State Implementation Plan Approval

Those States containing initial moderate PM<sub>10</sub> nonattainment areas were required by the 1990 amendments to the CAA to submit a SIP by November 15, 1991 which demonstrated attainment of the PM<sub>10</sub> NAAQS by December 31, 1994. To approve a redesignation request, the SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to that area. The Steamboat Springs area was designated nonattainment for PM<sub>10</sub> on December 21, 1993 (58 FR 67334). EPA fully approved the PM<sub>10</sub> SIP for Steamboat Springs on December 31, 1997 (62 FR 68188). The PM<sub>10</sub> SIP for Steamboat Springs is approved as meeting the moderate PM<sub>10</sub> nonattainment plan requirements.

#### iii. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to emission reductions which are permanent and enforceable. The primary sources of PM<sub>10</sub> emissions in the Steamboat Springs area are re-entrained road dust (from highways, paved roads, chip sealed roads, and unpaved roads) and woodburning. The permanent and enforceable control measures that brought the Steamboat Springs PM<sub>10</sub> nonattainment area into attainment and were approved by EPA into Colorado's SIP in 1997 are described in detail below.

The City of Steamboat Springs and Routt County adopted local ordinance and resolutions that limit the number and types of woodburning devices in new construction in the Steamboat Springs area. Installation of new solid fuel burning devices is limited to one approved device for any building. The Steamboat Springs area adopted these measures in the late 1980s and early 1990s and the measures were included

in State regulation in 1993 (Section VIII.E. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). The rule was approved by EPA on December 31, 1997 (62 FR 68188).

The Steamboat Springs area adopted two street sanding control strategies for the nonattainment area. The first street sanding control strategy requires that any user that applies street sanding materials in the Steamboat Springs area must use materials containing less than two percent fines, except on U.S. Highway 40 from the junction of U.S. Highway 131 towards Rabbit Ears Pass. This strategy was included in State regulations in 1996 (Section VIII.B. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). The second street sanding control strategy requires that the Colorado Department of Transportation (CDOT) reduce the amount of sand applied on U.S. Highways 40 and 131 in the Steamboat Springs area by 10 percent. This strategy was included in State regulation in 1996 (Section VIII.C. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). Both the street sanding controls were approved by EPA on December 31, 1997 (62 FR 68188).

In addition, the Steamboat Springs area adopted street sweeping requirements for a defined section of Lincoln Avenue (Highway 40 in town). Street cleaning using vacuum sweepers or any other sweepers with equal efficiency must be performed four times within four days of the roadways becoming free and clear of snow and ice following each sanding deployment use. This strategy was included in State regulations in 1996 (Section VIII.D. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). The rule was approved by EPA on December 31, 1997 (62 FR 68188).

In addition to the local control measures that have been adopted in the Steamboat Springs area, Colorado's July 31, 2002 submittal did cite several State-wide regulations that limit emissions from any new source that may locate in the Steamboat Springs area. These rules

are: "Air Pollution Emission Notices, Construction Permits and Fees, Operating Permits and Including the Prevention of Significant Deterioration" (Regulation No. 3), "Standards of Performance for New Stationary Sources" (Regulation No. 6), and the "Common Provisions Regulation."

In addition to these State and Local control measures, the Federal Motor Vehicle Emission Control Program has helped reduce PM<sub>10</sub> emissions in Steamboat Springs as older, higher emitting diesel vehicles are replaced with newer vehicles that meet tighter emission standards. Overall, despite growth in the Steamboat Springs nonattainment area (e.g., in population and vehicle miles traveled), attainment of the PM<sub>10</sub> NAAQS has been demonstrated. We have evaluated the various control measures, in addition to the 1999 attainment year emission inventory and the projected emissions described below, and have concluded that the continued attainment of the PM<sub>10</sub> NAAQS in the Steamboat Springs area has resulted from emission reductions that are permanent and enforceable.

#### iv. Fully Approved Maintenance Plan Under Section 175A of the CAA

Section 107(d)(3)(E) of the CAA requires that, for a nonattainment area to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the CAA. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, Colorado must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10 year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. (See sections 175A(b) and (d).) Our September 4, 1992 guidance outlines five core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are as follows:

#### a. Attainment Inventory

The maintenance plan should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. An emission inventory for Steamboat Springs was developed for the attainment year 1999 as well as the projection inventory for the 2005 and 2010 interim years and the 2015 maintenance year. The emission inventory incorporates the emission estimates for aircrafts, restaurants, stationary sources, woodburning, mobile exhaust, and re-entrained road dust emissions from paved and unpaved roads that are contained in the nonattainment area SIP element that was approved by EPA on December 31, 1997 (62 FR 68188). Aircraft emissions were determined by using EPA and Colorado's Air Pollution Control Division (APCD) developed emission factors and activity data provided by the City of Steamboat Springs. Restaurant emissions were developed using emission factors and survey data of activity in the Steamboat Springs area. Woodburning emissions were determined by using EPA and APCD developed emission factors and survey data of woodburning activity and practices in the Steamboat Springs area. Re-entrained dust from paved and unpaved roads were developed using APCD and CDOT vehicle miles traveled data and emission factors that were calculated using the EPA-approved formula, local silt loading data, and the application of credits from street sweeping and street sand reduction control measures. Mobil exhaust was determined using EPA's PART5 model. Stationary source emission in the Steamboat Springs area were determined by calculating allowable emissions from three facilities in the area in existence in the mid-1990s. The Craig and Hayden power plants were modeled at allowable emissions for all years however these emissions were not included in the emission inventories because they are not located within the Steamboat Springs nonattainment—attainment/maintenance area and modeling domain. Summary emission figures from the 1999 attainment year inventory, the 2005 and 2010 interim years, and the 2015 projected inventory for the Steamboat Springs area are provided in Table 1 below.

TABLE 1.—1999, 2005, 2010 AND 2015 PM<sub>10</sub> TOTAL EMISSION INVENTORY IN POUNDS PER DAY FOR STEAMBOAT SPRINGS

	PM <sub>10</sub> emissions (lbs./day)			
	1999	2005	2010	2015
Aircraft .....	24	27	30	34
Restaurant Grills .....	99	114	127	143
Vehicle Exhaust .....	53	52	56	63
Paved Roads .....	9122	10059	11271	12630
Unpaved Roads .....	7519	7233	8104	9080
Stationary Sources .....	584	242	271	304
Woodburning .....	1057	1216	1353	1522

More detailed descriptions of the 1999 attainment year inventory, the 2005 and 2010 interim years, and the 2015 projected inventory for the Steamboat Springs area are documented in the maintenance plan in Chapter 3, section B and in the Colorado technical support documentation. Colorado's submittal contains detailed emission inventory information that was prepared in accordance with EPA emission inventory guidance.<sup>1</sup> Following our review, we have determined that Colorado prepared an adequate attainment inventory for the Steamboat Springs area.

#### b. Maintenance Demonstration

A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. The maintenance demonstration for the Steamboat Springs area relied on the dispersion modeling methodology, which is the same level of modeling used in the original attainment demonstration for the moderate PM<sub>10</sub> SIP for this area. Maintenance is demonstrated when the highest modeled values at each receptor on the modeling grid are below the 150 µg/m<sup>3</sup>. The emission inventories for 2005, 2010, and 2015 were input into the dispersion model to obtain 2005, 2010, and 2015 projected PM<sub>10</sub> concentrations. The dispersion modeling for the Steamboat Springs PM<sub>10</sub> maintenance area demonstrates that in 2005 the highest concentration is 121 µg/m<sup>3</sup>, in 2010 the highest concentration is 132 µg/m<sup>3</sup>, and in 2015

the highest concentration is 146 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS.

Since no exceedances of the PM<sub>10</sub> annual NAAQS have ever occurred in the Steamboat Springs area and since the maintenance demonstration clearly shows maintenance of the 24-hour PM<sub>10</sub> NAAQS in this area through the year 2015, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. Thus, EPA believes Colorado has adequately demonstrated that the Steamboat Springs area will maintain the PM<sub>10</sub> NAAQS for at least the next ten years. Detailed information regarding the dispersion modeling results and source apportionment can be found in Chapter 3, section C of the Steamboat Springs maintenance plan and in the technical support document.

#### c. Monitoring Network

Once a nonattainment area has been redesignated to attainment, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Colorado operates two PM<sub>10</sub> monitoring sites in the Steamboat Springs area. We approve these sites annually, and any future change would require discussion with, and approval from, us. In their July 31, 2002 submittal, Colorado committed to continue to operate the PM<sub>10</sub> monitoring stations in Steamboat Springs, in accordance with 40 CFR part 58.

#### d. Verification of Continued Attainment

A state's maintenance plan submittal should indicate how it will track the progress of the maintenance plan. This is necessary due to the fact that the emission projections made for the maintenance demonstration depend on assumptions of point and area source growth. Colorado commits to operating the Steamboat Springs PM<sub>10</sub> monitoring

network and analyze the PM<sub>10</sub> concentrations in accordance with 40 CFR Part 58 to verify continued maintenance of the PM<sub>10</sub> NAAQS. In addition, Colorado commits to track the progress of the Steamboat Springs maintenance plan through a periodic review (every three years) of the assumptions made in the emissions inventories to verify continued maintenance of the PM<sub>10</sub> NAAQS in both areas. EPA relies on these commitments in approving the Steamboat Springs maintenance plan.

#### e. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, a state is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously when a violation of the NAAQS has occurred in a redesignated area. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

Chapter 3, section H, of the Steamboat Springs maintenance plan contains the area's PM<sub>10</sub> contingency plan. Exceedances trigger one level of response and violations trigger another. If there's an exceedance, the Air Pollution Control Division (APCD) and the local government staff will develop appropriate contingency measures intended to prevent or correct a violation of the PM<sub>10</sub> standard for the PM<sub>10</sub> maintenance area. APCD and local

<sup>1</sup> EPA's current guidance on the preparation of PM<sub>10</sub> emission inventories includes, "PM<sub>10</sub> Emission Inventory Requirements," September 1994, "Emission Inventory Improvement Program Technical Report Series, Volumes I–VII," July 1997 and September 1999, "Revised 1999 National Emission Inventory Preparation Plan," February 2001.

government staff will consider relevant information, including information about historical exceedances, meteorological data, the most recent estimates of growth and emissions, and whether the exceedance might be attributed to an exceptional event. The Steamboat Springs maintenance plan indicates that the State will generally notify EPA and local governments in the PM<sub>10</sub> maintenance area within 30 days of the exceedance, but no later than 45 days. The process for exceedances will be completed within six months of the exceedance notification.

If a violation of the PM<sub>10</sub> NAAQS has occurred, a public hearing process at the State and local level will begin. If the Colorado Air Quality Control Commission (AQCC) agrees that the implementation of local measures will prevent further exceedances or violations, the AQCC may endorse or approve of the local measures without adopting State requirements. If, however, the AQCC finds locally adopted contingency measures to be inadequate, the AQCC will adopt State enforceable measures as deemed necessary to prevent additional exceedances or violations. Contingency measures will be adopted and fully implemented within one year of the PM<sub>10</sub> NAAQS violation. Any State-enforceable measures will become part of the next revised maintenance plan, submitted to us for approval.

The Steamboat Springs PM<sub>10</sub> maintenance plan specifies the following as potential contingency measures for the Steamboat Springs area: Reinstating the 10 percent street sand reduction requirement for State highways; increasing the Lincoln Avenue street sweeping frequency from two to four times after each sanding event; increased street sweeping requirements; road paving requirements; more stringent street sand specifications; voluntary or mandatory woodburning curtailment; bans on all woodburning; expanded, mandatory use of alternative de-icers; re-establishing nonattainment new source review permitting requirements for stationary sources;<sup>2</sup> transportation control measures designed to reduce vehicle miles traveled; or other emission control measures as deemed appropriate, considering various factors.

#### *f. Subsequent Maintenance Plan Revisions*

In accordance with section 175A(b) of the CAA, the State of Colorado is required to submit a revision to the maintenance plan eight years after the redesignation of the Steamboat Springs area to attainment for PM<sub>10</sub>. This

revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten year period. Colorado committed, in the Steamboat Springs redesignation request, to submit a revised maintenance plan, for each area, to EPA eight years after the approval of the redesignation request and maintenance plan.

#### *v. Meeting Applicable Requirements of Section 110 and Part D of the CAA*

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the CAA. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

#### *a. Section 110 Requirements*

Section 110(a)(2) contains general requirements for nonattainment plans. These requirements were met for Steamboat Springs with Colorado's September 16, 1997 submittal for the Steamboat Springs PM<sub>10</sub> nonattainment area. EPA fully approved the Steamboat Springs PM<sub>10</sub> SIP on December 31, 1997 (62 FR 68188).

#### *b. Part D Requirements*

Before a PM<sub>10</sub> nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas, subpart 4 of part D establishes specific requirements applicable to PM<sub>10</sub> nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM<sub>10</sub> NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of Reasonably Available Control Measures (RACM), the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our December 31, 1997 (62 FR 68188) approval of the Steamboat Springs PM<sub>10</sub> SIP.

Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity

SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

We approved the requirements of the part D new source review (NSR) permit program for the Steamboat Springs moderate PM<sub>10</sub> nonattainment area on December 31, 1997 (62 FR 68188). Colorado's nonattainment area NSR permitting regulations were fully approved on September 19, 1994 (59 FR 47807). Once the Steamboat Springs area is redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the CAA will apply. Colorado's PSD regulations, which we approved as meeting all applicable Federal requirements, apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Steamboat Springs area upon redesignation of the area to attainment.

#### *C. Have the Transportation Conformity Requirements Been Met?*

Transportation conformity is required by section 176(c) of the CAA. Our conformity rule requires that transportation plans, programs and projects conform to SIPs and that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund v. the Environmental Protection Agency*, No. 97-1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in State Implementation Plans (SIPs) are adequate before they are used to determine the conformity of Transportation Plans or Transportation Improvement Programs. In response to the court decision, we make any submitted SIP revision containing an emission budget available for public comment and respond to these comments before announcing our adequacy determination. The criteria and process by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) and in the guidance "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," dated May 14, 1999.

In the Steamboat Springs maintenance plan, Colorado established a new mobile source emissions budget of 21,773 lbs./day for the year 2015 and beyond. The new mobile source emissions budget for Steamboat Spring is the total of the 2015 mobile source PM<sub>10</sub> emissions for the area and includes emissions from vehicle exhaust, highways, paved arterial and local roads, and gravel roads. EPA's approval of 21,773 lbs./day for Steamboat Springs as the budget for this area means that the value must be used for conformity determinations for 2015 and beyond.

EPA sent a letter to the Colorado Air Pollution Control Division (APCD) on September 25, 2002 stating that the motor vehicle emission budgets that was submitted with the Steamboat Springs PM<sub>10</sub> maintenance plan is adequate. This finding has also been announced on EPA's conformity Web site: <http://www.epa.gov/otaq/transp/conform/adequacy.htm>. We documented our adequacy determination for Steamboat Springs in the **Federal Register** on October 28, 2002 (67 FR 65789). The budgets took effect on November 12, 2002 (15 days after our announcement in the **Federal Register**).

#### *D. Did Colorado Follow the Proper Procedures for Adopting This Action?*

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

Colorado held a public hearing for the proposed rule changes on November 15, 2001. The rulemaking was adopted by the Air Quality Control Commission (AQCC) directly after the November 15, 2001 hearing and was formally submitted to EPA by the Governor on July 31, 2002. We have evaluated the Governor's submittal and have determined that Colorado met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

### **III. Background**

To implement our 1987 revisions to the particulate matter NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM<sub>10</sub> NAAQS would

require revisions of the existing SIP. We identified the Steamboat Springs area as a "Group II" area of concern, *i.e.*, areas where attainment of the NAAQS is uncertain and the SIP may require only slight adjustment.

Pursuant to sections 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I (55 FR 45799, October 31, 1990) and other areas which had monitored violations of the PM<sub>10</sub> NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Clean Air Act Amendments (Pub. L. 101-549, 104 Stat. 2399), designated nonattainment and classified as moderate for PM<sub>10</sub>. Formal codification in 40 CFR part 81 of those areas was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694) (see also 57 FR 56762, November 30, 1992). All other areas of the country were designated unclassifiable for PM<sub>10</sub> by operation of law upon enactment of the 1990 Amendments (see section 107(d)(4)(B)(iii) of the Act). EPA redesignated and classified the Steamboat Springs area as a PM<sub>10</sub> moderate nonattainment area on December 21, 1993 (58 FR 67334) and fully approved the PM<sub>10</sub> SIP for Steamboat Springs on December 31, 1997 (62 FR 68188).

EPA promulgated new standards for PM<sub>10</sub> on September 18, 1997. Areas were to be designated under the new PM<sub>10</sub> standard by July 2000. On May 14, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al., v. United States Environmental Protection Agency* vacated the 1997 PM<sub>10</sub> standard. Because of the Court ruling, we are continuing to implement the pre-existing PM<sub>10</sub> standard, and are therefore approving redesignations to qualified PM<sub>10</sub> nonattainment areas. On July 31, 2002 the Governor of Colorado submitted a request to redesignate the Steamboat Springs moderate PM<sub>10</sub> nonattainment area to attainment (for the 1987 PM<sub>10</sub> NAAQS) and submitted maintenance plans for the areas.

### **IV. Consideration of CAA Section 110(I)**

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. As stated above, the Steamboat Springs area has shown continuous attainment of the PM<sub>10</sub> NAAQS and has met the applicable Federal requirements for redesignation to attainment. The

maintenance plan and associated SIP revision will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

### **V. Statutory and Executive Order Review**

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 December 27,

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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: September 9, 2004.

Patricia D. Hull,  
*Acting Regional Administrator, Region 8.*

■ 40 CFR parts 52 and 81, chapter I, title 40 are amended 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 52.320 is amended by adding paragraph (c)(101) to read as follows:

§ 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(101) On July 31, 2002, the State of Colorado submitted a maintenance plan for the Steamboat Springs PM<sub>10</sub> nonattainment area and requested that this area be redesignated to attainment

for the PM<sub>10</sub> National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfies all applicable requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Elements)," 5 CCR 1001–20, revisions adopted November 15, 2001, effective December 30, 2001 as follows: Section VIII., titled "Steamboat Springs PM<sub>10</sub> Attainment/Maintenance Area" and supersedes and replaces all prior versions of Section VIII.

■ 3. Section 52.332 is amended by adding paragraph (n) to read as follows:

§ 52.332 Control strategy: Particulate matter.

\* \* \* \* \*

(n) On July 31, 2002, the State of Colorado submitted a maintenance plan for the Steamboat Springs PM<sub>10</sub> nonattainment area and requested that this area be redesignated to attainment for the PM<sub>10</sub> National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfies all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In section 81.306, the table entitled "Colorado—PM–10" is amended by revising the entries under Routt County (part) for "Steamboat Springs" to read as follows:

§ 81.306 Colorado.

\* \* \* \* \*

COLORADO.—PM–10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * *				
Routt County (part)—Steamboat Springs .....	November 24, 2004.	Attainment.		
On the East—The Routt National Forest.				
On the South—The southern border of sections 19, 10, 21, T4N, R84W of the 6th P.M. and the southern border of sections 23, 24, T4N, R85W of the 6th P.M.				

## COLORADO.—PM-10—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
On the West—Beginning at the southwestern corner of section 23, T4N, R85W of the 6th P.M. North along the western border of sections 23, 14, 11, T4N, R85W. Thence, along the ridge which bisects sections 35, 36, 25, 24, 13, 14, 11, 12, 1, T5N, R85W, and sections 36, 25, 24, T6N, R85W. Thence heading northwest along the ridge which bisects sections 23, 15, 10, 9, 4, T6N, R85W of 6th P.M. Thence, heading northeast along the ridge which bisects sections 33, 34, 35, 36, 25, T7N, R85W and sections 30 and 10 of T7N, R84W. Thence, north along the N 1/2 of the western edge of section 19, to the NW corner of section 18, T7N, R84W.				
On the North—The northern boundary of sections 16, 17, 18, T7N, R84W of 6th P.M.				
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 04-23840 Filed 10-22-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 262**

[OA-2004-0004; FRL-7830-1]

RIN 2090-AA13

**National Environmental Performance Track Program; Corrections****AGENCY:** Environmental Protection Agency (EPA)**ACTION:** Direct final rule; corrections.

**SUMMARY:** EPA is taking direct final action to revise and correct certain provisions in the Resource Conservation and Recovery Act (RCRA) program applicable only to members of the National Environmental Performance Track Program. The revisions concern the proposed rule published on August 13, 2002 (67 FR 52674), and the subsequent final rule published on April 22, 2004 (69 FR 21737). Both the proposal and the final rule contained an inconsistency between the preamble language and regulatory language. The final rule also inadvertently omitted three references to applicable regulatory provisions that were properly referenced in the proposed rule. The proposed and final rules cover provisions under both the Clean Air Act and RCRA. Today's direct final rule applies only to the RCRA provisions. The Clean Air Act provisions are unchanged.

The regulatory proposal of August 13, 2002 was published with a description in the preamble that was inconsistent with the proposed regulatory language.

EPA used the word "or" in the preamble description of the provision requiring notice when a generator accumulates hazardous waste, while the subject regulatory language used the word "and." No public comment was received during the public comment period concerning the inconsistent language, and the April 2004 rule repeated the inconsistency between the preamble and the regulatory language.

Today's rule corrects the preamble language to clarify that the rule requires notification to both the Regional Administrator and the authorized State.

In addition, the April 2004 final rule did not include three applicable regulatory provisions that were included in the original preamble of August 13, 2002 (67 FR 52674) proposal. The applicable regulatory provisions omitted from the final rule were correctly published in the proposal. Today's rule corrects the April 2004 final rule to include the applicable regulatory provisions.

EPA is publishing today's direct final rulemaking to address the inconsistency between the preamble and regulatory language, and to correct the inadvertently omitted applicable regulatory provisions. The applicable regulatory provisions corrected and finalized today are the same as the language that was proposed in August 2002 and received public comment.

Today's corrections are being published as a direct final rule because EPA believes these revisions to be non-controversial and does not anticipate any adverse comment. We are approving these revisions to correct the earlier inconsistency and omissions.

**DATES:** This direct final rule is effective December 27, 2004 unless EPA receives adverse comments by November 24, 2004. If the Agency receives adverse

comments it will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OA-2004-0004, 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://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Mail: Mr. Robert D. Sachs, Environmental Protection Agency, Mail code 1807T, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: [sachs.robert@epa.gov](mailto:sachs.robert@epa.gov).

- Hand Delivery: Office of Environmental Information Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OA-2004-0004. 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.epa.gov/edocket>, 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,