

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: April 3, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ 40 CFR part 52 is 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 TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(57) to read as follows:

#### § 52.2320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(57) On September 7, 1999 and February 11, 2003, the Governor of Utah submitted revisions to the SIP. The submittals revise Utah's Air Conservation Regulations (UACR), R307-170, Continuous Emission Monitoring Program, by repealing and re-enacting the rule to clarify requirements of the rule. The revisions are being approved into the SIP.

(i) Incorporation by reference.

(A) UACR R307-170, effective 4/1/1999, except sections R307-170-4, R307-170-5 and R307-170-9.

(B) UACR sections R307-170-4, R307-170-5 and R307-170-9, effective December 5, 2002.

[FR Doc. 03-12027 Filed 5-14-03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[CO-001-0070a; FRL-7489-4]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Governor of the State of Colorado on November 9, 2001, for the purpose of redesignating the Aspen, 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 Aspen 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. EPA is approving this redesignation request and maintenance plan because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Upon the effective date of this approval, the Aspen 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.

**DATES:** This rule is effective on July 14, 2003, without further notice, unless EPA receives adverse comment by June 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency,

Room B-108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. **FOR FURTHER INFORMATION CONTACT:** Libby Faulk, EPA, Region VIII, (303) 312-6083.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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#### I. EPA's Final Action

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

We are approving the Governor's submittal of November 9, 2001, that requests redesignation of the Aspen 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 Aspen PM<sub>10</sub> nonattainment area, which was submitted with the Governor's November 9, 2001, 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 Aspen PM<sub>10</sub> nonattainment area. Upon the effective date of this action, the Aspen area designation status under 40 CFR part 81 will be revised to attainment.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 14, 2003, without further notice unless the Agency receives adverse comments by June 16, 2003. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## 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 meet the

requirements of the CAA for redesignation of the Aspen area to attainment for PM<sub>10</sub>.

### B. Does the Aspen 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 one PM<sub>10</sub> monitoring site in the Aspen PM<sub>10</sub> nonattainment area. For this redesignation request, the Colorado Air Pollution Control Division (APCD) designated the Tapered Element Oscillating Microbalance (TEOM) monitor as the primary sampler for determining attainment of the PM<sub>10</sub> NAAQS in the Aspen area, beginning in 1998. Colorado submitted ambient air quality data from the monitoring site which demonstrate that the area has attained the PM<sub>10</sub> NAAQS. These air quality data were quality-assured and placed in AIRS. The 24-hour PM<sub>10</sub> NAAQS was exceeded once in Aspen in 1991 and the annual PM<sub>10</sub> NAAQS has never been exceeded. We reviewed the three most recent years of data for the area (1999–2001) and determined that the data is complete (*i.e.*, data are available for at least 75% of the scheduled PM<sub>10</sub> samples per quarter) with no recorded violations of either the 24-hour or annual PM<sub>10</sub> NAAQS. We believe that Colorado has adequately demonstrated, through ambient air quality data, that the PM<sub>10</sub> NAAQS have been attained in the Aspen 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 Aspen PM<sub>10</sub> SIP was initially submitted by Colorado on January 15,

1992, with revisions submitted on March 17, 1993, and December 9, 1993. EPA fully approved the PM<sub>10</sub> SIP for Aspen on September 14, 1994 (59 FR 47088). Additional revisions consisting of further updating of the technical and administrative information, adopting emission budgets for the Aspen area, and removing the voluntary no-drive program from consideration as part of the Federal SIP were submitted by Colorado on March 13, 1995, and were approved by EPA on December 17, 1997 (62 FR 66007). The PM<sub>10</sub> SIP for Aspen was approved as meeting the moderate PM<sub>10</sub> nonattainment plan requirements that were due to EPA on November 15, 1991.

#### 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. Control measures in the Aspen PM<sub>10</sub> element of the Colorado SIP were adopted by the Colorado Air Quality Control Commission in January 1993 and November 1993, and were approved by EPA on September 14, 1994 (59 FR 47088). The primary sources of PM<sub>10</sub> emissions in the Aspen 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 Aspen area into attainment of the NAAQS are explained in more detail below.

The City of Aspen and Pitkin County have adopted local ordinances that limit the number of woodburning devices in new construction in the Aspen area, and the City of Aspen adopted a local ordinance that requires emission controls for new restaurant grills. These woodburning and restaurant controls were adopted and implemented locally in the late 1980's and early 1990's and included in State regulation in 1993 (section III.C.4. of the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). The rule was approved by EPA into the SIP in 1994.

In addition, Aspen has adopted street sanding controls that require the use of street sanding material containing less than "one percent fines" with a durability index of less than 30 percent. This control strategy was adopted in 1993 and approved by EPA in 1994, and is defined in detail in section III.C.1. of the "State Implementation Plan—

Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas).”

In addition, Aspen has adopted street sweeping control requirements for any user of street sanding materials on defined roadways in the Aspen attainment/maintenance area. Street cleaning using broom sweepers or any other sweepers with equal efficiency must be performed within four days of the roadways becoming free and clear of snow and ice following each sanding deployment. These requirements are defined in detail in section III.C.2. of the “State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas).”

Aspen also has paid parking requirements that were adopted in 1993 and approved by EPA in 1994 and will remain as part of the federal SIP. Parking on public streets within the City of Aspen’s commercial core and surrounding residential areas is restricted through parking fees and permits to reduce traffic and encourage transit ridership. This requirement is defined in detail in section III.C.3. of the “State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas).”

In addition, the City of Aspen implemented local transit measures such as expansion of the bus fleet by 14 buses, establishment of a 400 space Park ‘n Ride lot and a 250 space intercept parking lot, and establishment of cross-town and intercept lot shuttle services. These measures were adopted in 1993

and approved by EPA in 1994 and have been completed.

In addition to the State and local control measures, the Federal Motor Vehicle Emission Control Program has reduced PM<sub>10</sub> emissions in Aspen as older, higher emitting diesel vehicles are replaced with newer vehicles that meet tighter emission standards. Overall, despite growth in the Aspen nonattainment area (e.g., in population, employment 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 1997 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 Aspen 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 5 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 Aspen was developed for the attainment year 1997 as well as a projection inventory for the year 2015. The emission inventory incorporates the emission estimates for woodburning, arterial and local street re-entrained emissions, gravel road emissions, restaurant exhaust emissions, and mobile exhaust emissions that are contained in the nonattainment area SIP Element that was approved by EPA on September 22, 1994. The emission inventory reflects 1997 emissions for airport emissions based on information provided by the Federal Aviation Administration (FAA) and highway re-entrained road dust emissions using the latest traffic counts from the Colorado Department of Transportation (CDOT). There are no stationary sources in the attainment/maintenance area. Summary emission figures from the 1997 attainment year and the 2015 projected year are provided in Tables 1, 2 and 3 below.

TABLE 1.—1997 AND 2015 PM<sub>10</sub> TOTAL EMISSION INVENTORY FOR ROAD DUST ACTIVITY IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Highway 82	Paved roads		Gravel roads
		Arterial	Local	
1997 .....	7540	1468	1000	79
2015 .....	12109	2358	1606	127

\* 1997 emissions from Highway 82, paved arterial roads, paved local roads, and gravel roads were increased by 60.6% based on long-term traffic projections from CDOT (58%) through 2015 and adding some additional VMT (1.65%) in the year 2015 to account for eliminating from the federally-approved plan some transit and parking measures.

TABLE 2.—1997 AND 2015 PM<sub>10</sub> TOTAL EMISSION INVENTORY FOR RESTAURANT, MOBILE SOURCE, AND AIRCRAFT ACTIVITY IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Vehicle exhaust	Aircraft	Restaurants
1997 .....	44	28	27
2015 .....	44	44	36

\* 1997 emissions from restaurants were increased by 33.1% based on Pitkin County population projections to determine 2015 emissions.

\*\* Aircraft emissions are based on FAA activity projections.

\*\*\* 1997 emissions from vehicle exhaust are assumed to remain constant through 2015.

TABLE 3.—1997 AND 2015 PM<sub>10</sub> TOTAL EMISSION INVENTORY FOR WOOD STOVES/INSERTS AND FIREPLACES IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Wood stoves/ inserts	Fireplaces
1997 .....	84	233
2015 .....	112	233

\* 1997 emissions from wood stoves/inserts were increased by 33.1% based on Pitkin County population projections to determine 2015 emissions.

\*\* Fireplace emissions were held at 1997 levels due to a city/county cap on new fireplace construction.

More detailed descriptions of the 1997 attainment year inventory and the 2015 projected inventory 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 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. Colorado chose the modeling approach for the Aspen area.

The maintenance demonstration for the Aspen area uses the chemical mass balance (CMB) roll-forward 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. The CMB receptor model data are used to identify the sources of emissions that influence PM<sub>10</sub> concentrations in the area. Colorado used the attainment inventories to further refine the CMB source identification and then apportion the design day concentration. The design day concentration was determined using EPA's "Table look-up" method. Based on the number of samples collected during a three year period from 1996–1998<sup>2</sup> (1005

samples), the third highest concentration measured during that period is used as the design value. Because the third highest concentration measured during that period occurred outside of the traditional late winter/early spring high pollution season, the second highest concentration of 89 µg/m<sup>3</sup> was selected as the design value for this redesignation request and maintenance plan. Colorado prepared a maintenance inventory for the year 2015 and rolled forward the design day concentration based on the changes that occurred in the emission inventory from the attainment year to the maintenance year. Based on this process, the Aspen 2015 maintenance concentration is 130 µg/m<sup>3</sup>. Since these 2015 projections for Aspen are below the 24-hour PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup>, maintenance is demonstrated.

Although EPA would normally insist on some interim year projections between the attainment year and 2015, we have no reason to believe that total emissions will be greater than the 2015 projections in any of the interim years. Colorado applied simple, environmentally conservative, growth rates to all source categories. Thus, total emissions in all years before 2015 should be less than 2015 total emissions and no interim year projections are required.

Since no violations of the annual PM<sub>10</sub> NAAQS have ever occurred in Aspen and since the maintenance demonstration clearly shows

the highest design value for developing the maintenance plan, and the higher the design value, the higher the predicted concentration in the maintenance year. In other words, the State's approach was conservative. Use of TEOM data alone would have resulted in a lower design value, and thus, a lower predicted concentration in the maintenance year. Although the TEOM monitor recorded a value of 109 µg/m<sup>3</sup> in 1999—a higher value than the three highest Hi-vol values in 1996–1998—the use of the 1999 TEOM data would not have altered the design value. This is because the high three values from both monitors would have fallen within the high pollution season, and the 3rd high—89 µg/m<sup>3</sup>—would've been the appropriate design value. Colorado used the TEOM monitoring method for data collected from 1998–2000 to demonstrate attainment because to demonstrate attainment, the latest 3 years of data must be used, and the TEOM is an equivalent monitoring method.

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 Aspen area will maintain the PM<sub>10</sub> NAAQS for at least the next ten years.

#### i. Control Strategy

According to the Calcagni memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A State can't take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions. In preparing the Aspen PM<sub>10</sub> maintenance plan, Colorado has chosen to retain the street sand specifications, street sweeping requirements, paid parking provisions, and woodburning and restaurant emissions requirements previously included in the SIP, with some minor revisions which are explained in more detail below.

Colorado is making minor revisions to the materials applicability section (III.C.1.a and III.C.2.a, "Applicability") of the street sanding and street sweeping requirements (contained in the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). These minor revisions delete language specific to salt and de-icing material making the language consistent with the SIP's federally approved definition of "Street Sanding Materials" which excludes salt and other de-icing chemicals. Since these changes do not change the enforceability of the street sanding or street sweeping control measures and make the language consistent with the SIP's federally

<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.

<sup>2</sup> Colorado used years 1996–1998 instead of 1998–2000 to develop the design value because there were data completeness issues with their Hi-vol data in 1999 and 2000. Using the Hi-vol data from 1996–1998 to calculate the design value resulted in

approved definition, we are approving the changes.

Colorado also submitted revisions to their SIP—Specific Regulations that change the reporting requirements for street sanding materials, street sweeping, and the implementation section for local control strategies in Aspen to recordkeeping requirements only and delete the reporting requirements for Division Audit Authority and for paid parking. These changes require users to retain records for 2 years. Users are no longer required to submit monthly and annual reports to the State. Since these changes in reporting requirements do not change the enforceability of the street sanding control measure, street sweeping control measure, paid parking control measure, or the implementation of local control strategies in Aspen, we are approving the changes.

Colorado also submitted revisions to section III.C.4 of the SIP—Specific Regulations. The City of Aspen and Pitkin County adopted local ordinances in the late 1980's and early 1990's that limit the number of woodburning devices in new construction in the Aspen area. These ordinances were included in State regulations in 1993 (section III.C.4 of the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). EPA approved section III.C.4 in 1994. Colorado's changes to section III.C.4 allow the City and the County to revise the ordinances to allow greater use of natural gas devices. Since the use of such devices will not increase primary PM<sub>10</sub> emissions, we are approving the changes.

In addition to the revised control measures, there are also certain control measures which are being removed from the control strategy with this maintenance plan. This is acceptable under the Calcagni Memorandum as long as the area can still demonstrate maintenance of the PM<sub>10</sub> standard in its projections. Through this redesignation, Colorado is requesting removal of specific control measures that were previously approved in the Aspen PM<sub>10</sub> SIP. The control measures being removed are expansion of the bus fleet by 14 buses, establishment of a 400 space Park'n Ride lot and a 250 space intercept parking lot, establishment of intercept lot and crosstown shuttle services, and establishment of a bus priority lane (which was removed from service shortly after implementation because of the severe traffic congestion that resulted from converting a driving lane into the bus lane). The vehicle miles traveled (VMT) reduction credits

that were assigned to these measures in the 1994 nonattainment SIP Element were used to determine VMT increases in 2015 for all roads in order to account for the potential for emissions increases due to the elimination of these measures. In accordance with section 175A(d) of the CAA, these transit control measures are being retained as possible contingency measures that could be re-implemented should the Aspen area violate the PM<sub>10</sub> NAAQS requirements.

Colorado is also eliminating a voluntary woodburning curtailment program. The voluntary woodburning curtailment program was not implemented because forecasts of high pollution events were never issued by the Air Pollution Control Division due to low PM<sub>10</sub> levels. However, the program is being retained as a potential contingency measure to bring the Aspen area back into compliance with the PM<sub>10</sub> NAAQS should a violation occur. Colorado is also eliminating the President's Day event strategies program of maximized sweeping and driving reduction efforts, which were adopted in 1993. These programs did not receive emission reduction credits and were sporadically implemented.

Although there are no stationary sources located in the Aspen attainment/maintenance area, the State's comprehensive permit rules will limit emissions from any new source that may, in the future, locate in the area. These rules include: (1) Regulation No. 3, "Air Pollution Emission Notices, Construction Permits and Fees, Operating Permits, and Including the Prevention of Significant Deterioration," (2) the "Common Provisions" regulation, and (3) Regulation No. 6, "Standards for Performance for New Stationary Sources." The Common Provisions, and Part A and B of Regulation No. 3 are already included in the approved SIP. Regulation No. 6 implements the federal standards of performance for new stationary sources. This reference to Regulation No. 6 shall not be construed to mean that this regulation is included in the SIP. Once this redesignation request and maintenance plan is approved by the EPA, the prevention of significant deterioration (PSD) permitting requirements become effective.

In addition to the State and local control measures mentioned above, the Federal Motor Vehicle Emission Control Program remains in effect and will continue to reduce PM<sub>10</sub> emissions in Aspen as older, higher-emitting diesel vehicles are replaced with newer vehicles that meet tighter emission standards.

#### 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 one PM<sub>10</sub> monitoring site in the Aspen area. We approve this site annually, and any future change would require discussion with, and approval from, us. In their November 9, 2001, submittal, Colorado committed to continue to operate this PM<sub>10</sub> monitoring station in Aspen, in accordance with 40 CFR part 58. Detailed information regarding the State's monitoring efforts and historical monitoring data can be found in chapter 2 of the "PM<sub>10</sub> Redesignation Request and Maintenance Plan for the Aspen Area."

#### 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 emission projections made for the maintenance demonstration depend on assumptions of point and area source growth. Colorado commits to operate the Aspen 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 Aspen 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 the Aspen area. EPA relies on these commitments in approving the Aspen 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, contains the Aspen PM<sub>10</sub> contingency plan. Exceedances trigger one level of response and violations trigger another. If there's an exceedance, APCD and local government staff will develop appropriate contingency measures intended to prevent or correct a violation of the PM<sub>10</sub> standard. APCD and local 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 maintenance plan indicates that the State will generally notify EPA and local governments in the Aspen area within 30 days of the exceedance, but in no event 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 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 maintenance plan specifies the following as potential contingency measures for the Aspen area: Increased street sweeping; road paving requirements; more stringent street sand specifications; voluntary or mandatory woodburning curtailment or bans on all woodburning; expanded mandatory use of alternative de-icers; re-establishing nonattainment new source review permitting requirements for stationary sources;<sup>3</sup> transportation control

measures designed to reduce vehicle miles traveled; re-implementing the following measures (but only if they are not being implemented at the time the contingency measures are triggered): expansion of the bus fleet by 14 buses, establishment of 400 Park 'n Ride lot spaces and a 250 space intercept parking lot, and establishment of intercept lot and cross-town shuttle services; or other 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 Aspen area to attainment for PM<sub>10</sub>. This revision is to provide for maintenance of the NAAQS for an additional 10 years following the first ten year period. Colorado commits, in the Aspen redesignation request, to submit a revised maintenance plan 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 Aspen with Colorado's January 15, 1992, submittal and revisions submitted on March 17, 1993, and December 9, 1993. EPA fully approved the Aspen PM<sub>10</sub> SIP on September 14, 1994 (59 FR 47088). Additional revisions were submitted by the State on March 13, 1995, and were approved by EPA on December 17, 1997 (62 FR 66007).

requirements will apply to the area after the effective date of this action, we interpret the maintenance plan's reference to mean "nonattainment new source review."

#### 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 September 14, 1994 (59 FR 47088), and December 17, 1997 (62 FR 66007), approvals of the Aspen 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.)

Although there are no stationary sources currently located in the Aspen attainment/maintenance area, once the Aspen 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 have previously approved as meeting all applicable Federal requirements (*See* 51 FR 31125, September 2, 1986), apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Aspen 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*

<sup>3</sup> The maintenance plan refers to "Re-establishing new source review permitting requirements for stationary sources." Given that PSD permitting

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 Aspen maintenance plan, Colorado established a new mobile source emissions budget of 16,244 lbs./day for the year 2015 and beyond. This budget is the total of the 2015 mobile source PM<sub>10</sub> emissions and includes emissions from vehicle exhaust, highways, paved arterial and local roads, and gravel roads. EPA's approval of 16,244 lbs./day as the budget means that this value must be used for conformity determinations for 2015 and beyond.

EPA sent a letter to the Colorado Air Pollution Control Division (APCD) on May 16, 2002 stating that the motor vehicle emissions budget in the submitted Aspen PM<sub>10</sub> maintenance plan is adequate. This finding has also been announced on EPA's conformity Web site: <http://www.epa.gov/oms/transp/conform/adequacy.htm>. We documented our adequacy determination for Aspen in the **Federal Register** on August 20, 2002 (67 FR 53925). The budgets took effect on September 4, 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 January 11, 2001. The rulemaking was adopted by the Air Pollution Control Division (APCD) directly after the January 11, 2001, hearing and was formally submitted to EPA by the Governor on November 9, 2001. 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 PM<sub>10</sub> 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 Aspen as a PM<sub>10</sub> "Group I" area of concern, *i.e.*, areas with a strong likelihood of violating the PM<sub>10</sub> NAAQS and requiring a substantial SIP revision. The Aspen area was among several Group I PM<sub>10</sub> areas, all of which were designated and classified as moderate PM<sub>10</sub> nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). See 56 FR 56694 at 56705-706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM<sub>10</sub> nonattainment areas were required to submit most elements of their PM<sub>10</sub> SIPs. (See sections 172(c), 188, and 189 of the CAA.) Some provisions, such as PM<sub>10</sub> contingency measures required by section 172(c)(9) of the CAA and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the CAA must be met. We fully approved the PM<sub>10</sub> SIP for Aspen on September 14, 1994 (59 FR 47088).

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 DC 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 November 9, 2001, the Governor of Colorado submitted a request to

redesignate the Aspen moderate PM<sub>10</sub> nonattainment area to attainment (for the 1987 PM<sub>10</sub> NAAQS) and submitted a maintenance plan for the area.

### IV. Consideration of CAA Section 110(l)

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 Aspen 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 revisions will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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. 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 July 14, 2003. 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: April 18, 2003.

**Robert E. Roberts,**

*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)(97) to read as follows:

##### § 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(97) On November 9, 2001, the State of Colorado submitted a maintenance plan for the Aspen 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 satisfy all applicable requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Colorado Air Pollution Control Division, "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)," 5 CCR 1001–20, revisions adopted January 11, 2001, effective February 28, 2001 as follows: Section III, which is titled "Aspen/Pitkin County PM<sub>10</sub> Attainment/Maintenance Area," and which supersedes and replaces all prior versions of Section III.

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

##### § 52.332 Control strategy: Particulate matter.

\* \* \* \* \*

(m) On November 9, 2001, the State of Colorado submitted a maintenance plan for the Aspen 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 satisfy 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 Pitkin County for the "Aspen/Pitkin County Area" to read as follows:

##### § 81.306 Colorado.

\* \* \* \* \*



COLORADO—PM—10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Pitkin County: Aspen/Pitkin County Area—The area encompassed by the following Parcel ID numbers, as defined by the Pitkin County Planning Department: 2337–29, 2737–28, 2737–21, 2737–20, 2737–19, 2737–18, 2737–17, 2737–08, 2737–07, 2737–06, 2735–22, 2735–15, 2735–14, 2735–13, 2735–12, 2735–11, 2735–10, 2735–03, 2735–02, 2735–01, 2641–31, 2643–36, 2643–35, 2643–34, 2643–27, 2643–26.	7/14/03	Attainment.		
* * * * *				

\* \* \* \* \*  
[FR Doc. 03–12026 Filed 5–14–03; 8:45 am]  
BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 74**

[MM Docket No. 95–31; FCC 03–44]

RIN 3060–AH96

**Reexamination of the Comparative Standard for Noncommercial Educational Applicants; Association of America’s Public Television Stations’ Motion for Stay of Low Power Television Auction (No. 81)**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission modifies its rules and procedures for allocating and licensing “non-reserved” broadcast spectrum where conflicting uses are proposed by commercial and noncommercial educational broadcast stations. The Commission received several comments in how to resolve solutions. These methods were established to select among competing noncommercial and commercial applicants.

**DATES:** Effective June 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Eric J. Bash (202) 418–1188 or *ebash@fcc.gov*, Peter Corea (202) 418–7931 or *pcorea@fcc.gov*, Media Bureau, Policy Division.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau’s *Second Report and Order (“2R&O”)* in MM Docket No. 95–31; FCC 03–44, adopted March 4, 2003, and released on April 10, 2003. The full text of this *2R&O* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth

Street, SW., Room CY—A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission’s copy contractor, Qualex International, Room CY—B402, telephone (202) 863–2893, or via e-mail *qualexint@aol.com*. This document is also available to persons with disabilities requiring accessible formats (electronic ASCII text, Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an e-mail to *access@fcc.gov*.

**Synopsis of Second Report and Order**

**I. Introduction**

1. In this *2R&O*, we establish new policies for licensing spectrum that the Commission has not reserved for the exclusive use of broadcast stations that provide or intend to provide noncommercial educational (“NCE”) service. In developing our new policies and procedures, we are constrained by a number of court decisions, regulations, and statutory provisions that, taken together, limit our options. We have come to the following conclusions. First, those stations that a nonprofit educational organization shows will be used to advance an educational program are eligible to be licensed as NCE radio or television stations and thus are exempt from auction. Nonprofit educational organizations that do not make such a showing must compete at auction for licenses. Second, we will not hold applicants for NCE stations ineligible to apply for non-reserved channels, and instead will permit such applicants to continue to apply for this spectrum in filing windows. Any applications for NCE stations determined to be mutually exclusive with applications for commercial stations will be dismissed, although applicants for services in which engineering solutions are possible will have a prior opportunity for settlement. Third, we reaffirm our

existing relaxed reservation criteria, which enable would-be applicants for NCE stations in the full-power FM and TV services to add to the number of channels reserved for their use when they demonstrate that they are technically precluded from using an already-reserved channel, and they will provide needed NCE service in a given area. Interested parties may use these criteria to reserve channels in future allocation proceedings, as well as to reserve channels already in the Table of Allotments for which the Commission initiated an allocation proceeding prior to the August 7, 2000 effective date of the relaxed reservation standards, and for which the Commission has never accepted applications. Interested parties may not use these criteria to reserve channels already in the Table for which the Commission initiated an allocation rulemaking after August 7, 2000, or channels for which the Commission has already accepted applications.

**II. Background**

2. The Commission licenses NCE stations on channels reserved for their exclusive use and also on other broadcast spectrum. In the FM service, the Commission has reserved twenty specific channels out of a total of one hundred channels, exclusively for full-power FM and FM translator use by NCE stations. In the television service, the Commission has reserved a similar proportion of channels, but using different channels in the Table of Allotments in different geographic areas across the country. The Commission has not reserved any particular frequencies for exclusive use in the AM service, or secondary TV services, such as low power television (LPTV) and TV translators.

3. The Commission initiated this proceeding in 1995 to revise the criteria it used to select among competing applicants for new NCE stations. In the past, the Commission had used