

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.*).

#### *B. Submission to Congress and the Comptroller General*

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

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 31, 2001. 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 approving the District of Columbia NO<sub>x</sub> Budget Trading Program as satisfying the NO<sub>x</sub> SIP Call 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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 J—District of Columbia**

2. In § 52.470, the table in paragraph (c) is amended by adding the entry under Chapter 10 in numerical order for Section 1014 to read as follows:

#### **§ 52.470 Identification of plan.**

\* \* \* \* \*

(c) EPA approved regulations.

#### **EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP**

State citation	Title/subject	State effective date	EPA approval date	Additional Explanation
*	*	*	*	*
<b>Chapter 10—Nitrogen Oxides Emissions Budget Program</b>				
*	*	*	*	*
Section 1014 .....	NO <sub>x</sub> Budget Trading Program For State Implementation Plans.	May 1, 2001 .....	November 1, 2001.	
*	*	*	*	*

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BILLING CODE 6560–60–P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[MT–001–0038, CO–001–0065; FRL–7093–7]

#### **Clean Air Act Determination of Attainment for PM<sub>10</sub> Nonattainment Areas; Montana and Colorado**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing determinations of attainment for the particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM<sub>10</sub>) national ambient air quality standards (NAAQS) for the Whitefish, Montana, Thompson Falls, Montana and Steamboat Springs, Colorado moderate PM<sub>10</sub> nonattainment areas. The Whitefish, Montana

nonattainment area was required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM<sub>10</sub> NAAQS by December 31, 1999. This final determination is based on complete, quality assured ambient air quality monitoring data for the years 1997, 1998, and 1999. The Thompson Falls, Montana and Steamboat Springs, Colorado nonattainment areas were required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM<sub>10</sub> NAAQS as of December 31, 2000. These final determinations are based on complete, quality assured ambient air quality monitoring data for the years 1998, 1999, and 2000.

**EFFECTIVE DATE:** This final rule is effective December 3, 2001.

**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.

**FOR FURTHER INFORMATION CONTACT:** Cindy Rosenberg, EPA, Region VIII, (303) 312-6436.

**SUPPLEMENTARY INFORMATION:** On August 8, 2001, EPA published a notice of proposed rulemaking (NPR) for the attainment determinations. The NPR proposed approval of the PM<sub>10</sub> attainment date determinations for Whitefish and Thompson Falls, Montana and Steamboat Springs, Colorado. Please refer to this proposed rulemaking for background information on Clean Air Act requirements for conducting attainment determinations. Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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  - B. Thompson Falls, Montana
    - Determination that the Thompson Falls PM<sub>10</sub> Nonattainment Area Attained the PM<sub>10</sub> NAAQS as of December 31, 2000.
  - C. Steamboat Springs, Colorado
    - Determination that the Steamboat Springs PM<sub>10</sub> Nonattainment Area Attained the PM<sub>10</sub> NAAQS as of December 31, 2000.
- III. Administrative Requirements

#### I. Final Action

Based on quality-assured data meeting the requirements of 40 CFR 50, appendix K, we are determining that Whitefish, Montana attained the PM<sub>10</sub> NAAQS as of December 31, 1999 and that Thompson Falls, Montana and Steamboat Springs, Colorado attained the PM<sub>10</sub> NAAQS as of December 31, 2000. This final action to determine attainment for Whitefish, Montana is based on monitored air quality data for the national ambient air quality standard (NAAQS) for PM<sub>10</sub> from the years 1997-99, and the actions for Thompson Falls, Montana and Steamboat Springs, Colorado are based on data from the years 1998-2000. With this final action, consistent with CAA section 188, the areas will remain moderate PM<sub>10</sub> nonattainment areas and avoid the additional planning requirements that apply to serious PM<sub>10</sub> nonattainment areas.

This action should not be confused with a redesignation to attainment under CAA section 107(d) because neither Montana nor Colorado have submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignation. The designation status in 40 CFR part 81 will remain moderate nonattainment for all three areas until such time as Montana and Colorado meet the CAA requirements for redesignations to attainment.

#### II. Basis for EPA's Final Action

##### A. Whitefish, Montana

Determination that the Whitefish PM<sub>10</sub> Nonattainment Area Attained the PM<sub>10</sub> NAAQS as of December 31, 1999

Whether an area has attained the PM<sub>10</sub> NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR part 50, appendix K. Since the attainment date for Whitefish was December 31, 1999, the three year period covers calendar years 1997, 1998, and 1999. Samples were collected on an every day schedule for Whitefish during this time period.

The PM<sub>10</sub> concentrations reported at the monitoring site showed one measured exceedance of the 24-hour PM<sub>10</sub> NAAQS in 1997 with a value of 178 µg/m<sup>3</sup>; the expected exceedances for this year also calculated to 1. For 1998 and 1999, the number of exceedances and expected exceedances were 0.0. Thus, the three-year average was less than 1.0, which indicates that Whitefish attained the 24-hour PM<sub>10</sub> NAAQS as of December 31, 1999. The

second highest value recorded between 1997 and 1999 at the Whitefish monitoring site was 138 µg/m<sup>3</sup> which is below the standard of 150 µg/m<sup>3</sup>.

Review of the annual standard for calendar years 1997, 1998 and 1999 reveals that Whitefish also attained the annual PM<sub>10</sub> NAAQS by December 31, 1999. There was no violation of the annual standard for the three year period from 1997 through 1999. The expected annual average value for the three year period was 29 µg/m<sup>3</sup>, which is below the standard of 50 µg/m<sup>3</sup>.

##### B. Thompson Falls

Determination that the Thompson Falls PM<sub>10</sub> Nonattainment Area Attained the PM<sub>10</sub> NAAQS as of December 31, 2000

Since the attainment date for Thompson Falls was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. The PM<sub>10</sub> concentrations reported at the two monitoring sites showed no measured exceedances of the 24-hour PM<sub>10</sub> NAAQS between 1998 and 2000. Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Thompson Falls also attained the annual PM<sub>10</sub> NAAQS by December 31, 2000. No monitoring sites showed a violation of the annual standard in the three year period from 1998 through 2000 and the expected annual average value for the three year period was 26 µg/m<sup>3</sup>, which is below the standard of 50 µg/m<sup>3</sup>. The sampling frequency at the Thompson Falls monitoring site during the first and fourth quarters of 1998 and 1999 was every two days and every sixth day for the second and third quarters. During 2000, the sampling frequency was every two days for the first quarter, every sixth day for second and third quarters and every third day for the fourth quarter.

As described above, the 1987 Guideline provides eligibility requirements and example situations in which data may be substituted. For Thompson Falls, there were two quarters during this three year attainment period (1998-2000), which had less than 75% data capture, but greater than 50% data capture and thus qualified for data substitution under our guidelines. The first quarter of 1999 had 12 values substituted, and used an 89 µg/m<sup>3</sup> value from February 25, 1997 for substitution, bringing the quarterly average to 39.3 µg/m<sup>3</sup>, and the 1999 annual average to 35.1 µg/m<sup>3</sup>. The third quarter of 2000 had 4 values substituted, and used a 75 µg/m<sup>3</sup> value from August 10, 2000 as the substitution value, bringing the quarterly average to 40.7

$\mu\text{g}/\text{m}^3$ , and the 2000 annual average to  $20.5 \mu\text{g}/\text{m}^3$ .

In 1999, the data recovery for Thompson Falls was incomplete due to extenuating circumstances at the monitoring site. The Courthouse on which the monitoring site had been located was being re-roofed and therefore, MDEQ was forced to find a new site on short notice, without enough time to set up a new monitoring site before the existing site was shut down. This forced MDEQ to miss all the monitoring days for the entire 3rd quarter of 1999. A new monitoring site was set up on the grounds of the local high school for the fourth quarter of 1999. The Region used 40 CFR part 50, appendix K and our April 1987 "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" to address the missing data from 1999. The Region decided to substitute third quarter data from 1998 for 1999 because we believe that it is representative of what third quarter 1999 data would have looked like had the monitoring site continued to operate. We believe this is an acceptable method because the exceedances that Thompson Falls experienced in the early 1990's were during winter months, not during the third quarter of the year. In addition, the particulate problem in Thompson Falls is related to road dust and that problem has been resolved since street sweeping measures were adopted by Montana and implemented in 1998. Therefore, we don't expect that there would have been any recorded exceedances during the third quarter of 1999 had the monitor been operating.

Since MDEQ was forced to change monitoring sites in the middle of the three year period necessary for Thompson Falls to show attainment by the area's attainment date, we don't have complete data at any one monitoring site. However, we believe that combining the data from the two separate monitoring sites is acceptable in this situation. We also believe that the location of the replacement monitoring site within the extremely small town of Thompson Falls provides adequate characterization of the community's air. We believe that Thompson Falls' data meets our Guideline and rule requirements. Therefore, with the preceding actions concluded, we believe that the data indicates that Thompson Falls attained the 24-hour and annual  $\text{PM}_{10}$  NAAQS as of December 31, 2000.

### C. Steamboat Springs

Determination that the Steamboat Springs  $\text{PM}_{10}$  Nonattainment Area Attained the  $\text{PM}_{10}$  NAAQS as of December 31, 2000

Since the attainment date for Steamboat Springs was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. Steamboat Springs was operating on an every day sampling frequency during this time period. The  $\text{PM}_{10}$  concentrations reported at the monitoring site showed no measured exceedances of the 24-hour  $\text{PM}_{10}$  NAAQS between 1998 and 2000, which indicates Steamboat Springs attained the 24-hour  $\text{PM}_{10}$  NAAQS as of December 31, 2000. The highest monitored 24-hour value between 1998 and 2000 was  $148 \mu\text{g}/\text{m}^3$ . Although this wasn't an exceedance of the NAAQS, we agreed with Colorado that this value should be excluded as a high wind event under our May 30, 1996 "Areas Affected by  $\text{PM}_{10}$  Natural Events" policy. This data was flagged as a natural event in our Aerometric Information Retrieval System (AIRS) and Colorado submitted the proper documentation package to us certifying that this monitored value was due to unusually high winds in the area. Because of this, the highest applicable monitored 24-hour value during the three year period was  $121 \mu\text{g}/\text{m}^3$  which is below the standard of  $150 \mu\text{g}/\text{m}^3$ .

Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Steamboat Springs also attained the annual  $\text{PM}_{10}$  NAAQS by December 31, 2000. Data collected at the monitoring site showed no violations of the annual standard in the three year period from 1998 through 2000. The expected annual average value for the three year period was  $25 \mu\text{g}/\text{m}^3$ , which is below the standard of  $50 \mu\text{g}/\text{m}^3$ .

### III. Administrative Requirements

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 final action merely determines that certain States have met federal requirements and imposes no requirements. 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 doesn't impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 makes attainment determinations, 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. However, in this context, there is no state request or submittal for these attainment determinations. 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 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 16, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

Chapter I, title 40, part 52 of the Code of Federal Regulations 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 G—Colorado

2. Section 52.332 is amended by revising the section heading and by adding paragraph (k) to read as follows:

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

\* \* \* \* \*

(k) *Determination*—EPA has determined that the Steamboat Springs PM<sub>10</sub> "moderate" nonattainment area attained the PM<sub>10</sub> national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

#### Subpart BB—Montana

3. Section 52.1374 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### **§ 52.1374 Control strategy: Particulate matter.**

\* \* \* \* \*

(b) *Determination*—EPA has determined that the Whitefish PM<sub>10</sub> "moderate" nonattainment area attained

the PM<sub>10</sub> national ambient air quality standard by December 31, 1999. This determination is based on air quality monitoring data from 1997, 1998, and 1999. EPA has determined that the Thompson Falls PM<sub>10</sub> "moderate" nonattainment area attained the PM<sub>10</sub> national ambient air quality standard by December 31, 2000. This determination is based on air quality monitoring data from 1998, 1999, and 2000.

[FR Doc. 01-27277 Filed 10-31-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket #s: OR 68-7283a, OR 37-2-6301a, and OR 37-1-6301a; FRL-7035-6]

### Approval and Promulgation of Air Quality Implementation Plan; Oregon

**AGENCY:** Environmental Protection Agency (EPA or "we").

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving most but not all of the State Implementation Plan (SIP) revisions submitted by the State of Oregon. This rulemaking evaluates the provisions of the Oregon Visibility SIP submitted August 26, 1993, smoke management plan provisions submitted on August 26, 1993, amendments to the smoke management plan for the Blue Mountains submitted September 27, 1995, and revisions to the Oregon field burning program submitted July 3, 1997. We are acting on these submissions together because they address, or are affected by, the control of particulate matter from area sources, specifically smoke from field burning and smoke from forestry burning. These rules are also linked through the Oregon Visibility SIP, which seeks to control visibility degradation through field burning programs and smoke management programs.

EPA is taking no action on the provision in the visibility SIP changing the review period from three to five years. Instead, the original three year review cycle will remain in the federally approved SIP until the first Regional Haze SIP is submitted and approved.

**DATES:** This direct final rule will be effective December 31, 2001, unless EPA receives adverse comment by December 3, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the informing the public that the rule will not take effect.

**ADDRESSES:** Mail written comments to Steven K. Body, EPA, Region 10, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101. You can see copies of the relevant documents used in this rulemaking during normal business hours at the following location: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, EPA Region 10, Office of Air Quality, at (206) 553-0782.

**SUPPLEMENTARY INFORMATION:** The supplementary information is organized in the following order:

- I. Visibility
  - A. What is visibility protection and why do we have it?
  - B. How is visibility being protected in Oregon?
  - C. What does Oregon's 1993 Visibility SIP submission propose to change and how do these changes compare to the Federal requirements?
  - D. Which regulations are being approved through this federal action?
- II. Smoke Management Plan
  - A. What is Oregon's Smoke Management Plan?
  - B. How does Oregon's 1993 submission change the plan?
  - C. How does the Smoke Management Plan compare to Federal requirements?
  - D. Which regulations are being approved through this Federal action?
- III. Smoke Management Plan—Blue Mountains Revision
  - A. What changes to the Smoke Management Plan are being proposed?
  - B. What are the Federal requirements?
  - C. Which regulations are being approved through this Federal action?
- IV. Field Burning
  - A. What is Oregon's field burning program?
  - B. How does this SIP submission change the program?
  - C. What are the changes in acreage limitations?
  - D. What are the changes in registration and permitting of different types of burning?
  - E. Are there any other significant changes proposed by the 1997 SIP submission?
  - F. What are the Federal requirements for field burning?
  - G. Which regulations are being approved through this Federal action?
- V. Administrative Requirements

#### I. Visibility

##### *A. What Is Visibility Protection and Why Do We Have It?*

Section 169A of the Federal Clean Air Act (CAA or Act) requires states to protect visibility in mandatory Class I Federal areas where visibility is an important value. Mandatory Class I Federal areas are generally large national parks or wilderness areas where visibility is considered an important value. In Oregon, there are 12