

Reduction Act of 1995 for 60 days, until February 11, 2014. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

## II. Request for Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: December 20, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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**BILLING CODE 4160-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2011-0834; FRL-9904-90-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year PM<sub>10</sub> Maintenance Plan for Pagosa Springs

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Pagosa Springs area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>). The State adopted the revised maintenance plan on November 19, 2009. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the PM<sub>10</sub> standard for a second 10-year period beyond the area's original redesignation to attainment for the PM<sub>10</sub> NAAQS. EPA is proposing to approve the revised maintenance plan

with the exception of one aspect of the plan's contingency measures. EPA's proposed approval includes the revised maintenance plan's 2021 transportation conformity motor vehicle emissions budget for PM<sub>10</sub>. In proposing to approve the revised maintenance plan, we are proposing to exclude from use in determining that Pagosa Springs continues to attain the PM<sub>10</sub> NAAQS, exceedances of the PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on March 22, 2009, April 3, 2009, April 5, 2010, April 28, 2010, April 29, 2010, May 11, 2010, and May 22, 2010 because the exceedances meet the criteria for exceptional events caused by high wind natural events. This action is being taken under sections 110 and 175A of the CAA.

**DATES:** Written comments must be received on or before January 27, 2014.

**ADDRESSES:** Submit your comments, identified by Docket number EPA-R08-OAR-2011-0834, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: [olson.kyle@epa.gov](mailto:olson.kyle@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2011-0834. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kyle Olson, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6002, [olson.kyle@epa.gov](mailto:olson.kyle@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Definitions**

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 initials *APCD* mean or refer to the Colorado Air Pollution Control Division.
- iii. The initials *AQCC* mean or refer to the Colorado Air Quality Control Commission.

- iv. The words *CMB* mean or refer to chemical mass balance.
- v. The words *Colorado* and *State* mean or refer to the State of Colorado.
- vi. The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- vii. The initials *MVEB* mean or refer to motor vehicle emissions budget.
- viii. The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.
- ix. The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- x. The initials *RTP* mean or refer to the Regional Transportation Plan.
- xi. The initials *SIP* mean or refer to State Implementation Plan.
- xii. The initials *TIP* mean or refer to the Transportation Improvement Program.
- xiii. The initials *TSO* mean or refer to technical support document.

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## I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Background

The Pagosa Springs area was designated nonattainment for PM<sub>10</sub> and classified as moderate by operation of law upon enactment of the CAA Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA approved Colorado's nonattainment area SIP for the Pagosa Springs PM<sub>10</sub> nonattainment area on May 19, 1994 (59 FR 26126).

On May 10, 2000, the Governor of Colorado submitted a request to EPA to redesignate the Pagosa Springs moderate PM<sub>10</sub> nonattainment area to attainment for the 1987 PM<sub>10</sub> NAAQS. Along with this request, the State submitted a maintenance plan, which demonstrated that the area was expected to remain in attainment of the PM<sub>10</sub> NAAQS through 2012. EPA approved the Pagosa Springs maintenance plan and redesignation to attainment on June 15, 2001 (66 FR 32556).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period.<sup>1</sup> This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year update of the PM<sub>10</sub> maintenance plan to EPA on March 31, 2010 (hereafter, "revised Pagosa Springs PM<sub>10</sub> Maintenance Plan").

As described in 40 CFR 50.6, the level of the national primary and secondary 24-hour ambient air quality standards for PM<sub>10</sub> is 150 micrograms per cubic meter (µg/m<sup>3</sup>). An area attains the 24-

hour PM<sub>10</sub> standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as "exceedance"), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one, averaged over a three-year period.<sup>2</sup> See 40 CFR 50.6 and 40 CFR part 50, appendix K.

Table 1 below shows the maximum monitored 24-hour PM<sub>10</sub> values for the Pagosa Springs PM<sub>10</sub> maintenance area for 1998 through 2012, excluding seven values the State flagged as being caused by exceptional events. The table reflects that most of the values for the Pagosa Springs area were below the PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup>. In 2000 the area experienced an exceedance measured at 165 µg/m<sup>3</sup>, and in 2009 exceedances measured at 182 and 188 µg/m<sup>3</sup>.<sup>3</sup> These exceedances did not cause a violation of the PM<sub>10</sub> NAAQS.

40 CFR 50.1(j) defines an exceptional event as an event which affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Exceptional events do not include stagnation of air masses or meteorological inversions, meteorological events involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance. 40 CFR 50.14(b) states that EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS at a particular air quality monitoring location and

<sup>2</sup> An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 µg/m<sup>3</sup>, after rounding to the nearest 10 µg/m<sup>3</sup> (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 µg/m<sup>3</sup> would not be an exceedance since it would be rounded to 150 µg/m<sup>3</sup>; whereas, a recorded value of 155 µg/m<sup>3</sup> would be an exceedance since it would be rounded to 160 µg/m<sup>3</sup>. See 40 CFR part 50, appendix K, section 1.0.

<sup>3</sup> The State flagged the exceedance of 188 µg/m<sup>3</sup> from April 25, 2009 as being caused by an exceptional event but, due to an administrative oversight, did not demonstrate that it was caused by an exceptional event by the June 30, 2012 regulatory deadline (see 40 CFR 50.14). Thus, EPA was unable to concur on the flag for that exceedance. In addition, it is thought that the exceedance of 182 µg/m<sup>3</sup> was recorded during a regional dust storm on April 8, 2009 but that the site operator mistakenly gave the filter a date of April 6, 2009. Since this supposition could not be proved, the State was unable to flag the April 6 exceedance of 182 µg/m<sup>3</sup>.

<sup>1</sup> In this case, the initial maintenance period described in CAA section 175A(a) was required to extend for at least 10 years after the redesignation to attainment, which was effective on August 14, 2001. See 66 FR 32556. Therefore, the first maintenance plan was required to show maintenance through 2011. CAA section 175A(b) requires that the second 10-year maintenance plan maintain the NAAQS for "10 years after the expiration of the 10-year period referred to in [section 175A(a)]." Thus, for the Pagosa Springs area, the second 10-year period ends in 2021.

otherwise satisfies the requirements of section 50.14.

On March 29 and 30, 2012, the State submitted exceptional events packages for two exceedances of the PM<sub>10</sub> NAAQS in Pagosa Springs that measured 255 µg/m<sup>3</sup> on March 22, 2009, and 225 µg/m<sup>3</sup> on April 3, 2009. On June 28, 2013, the State submitted four exceptional events packages for five exceedances of the PM<sub>10</sub> NAAQS in Pagosa Springs that measured 349 µg/m<sup>3</sup> on April 5, 2010, 181 µg/m<sup>3</sup> on April 28,

2010, 162 µg/m<sup>3</sup> on April 29, 2010, 200 µg/m<sup>3</sup> on May 11, 2010, and 187 µg/m<sup>3</sup> on May 22, 2010. The Colorado Air Pollution Control Division (APCD) flagged these seven exceedances as exceptional events in EPA's Air Quality System, which is EPA's repository for ambient air quality data. EPA concurred on the APCD's flags in August, September, and November of 2013 because the State successfully demonstrated that the exceedances were caused by natural high wind

exceptional events blowing desert dust from upwind natural desert areas of Arizona, Utah, New Mexico, and southwest Colorado into the Pagosa Springs area. Thus, we are proposing to exclude from use in determining that Pagosa Springs continues to attain the 24-hour PM<sub>10</sub> NAAQS the exceedances of the 24-hour PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on the seven dates listed above. See 40 CFR 50.14(b) and (c)(2)(ii).

TABLE 1—PAGOSA SPRINGS PM<sub>10</sub> MAXIMUM 24-HOUR VALUES (THERE ARE TWO 2001 VALUES DUE TO THE MONITOR BEING MOVED THAT YEAR FROM THE TOWN HALL TO HIGH SCHOOL LOCATION) BASED ON DATA FROM TOWN HALL AND HIGH SCHOOL MONITORING SITES, AQS IDENTIFICATION NUMBER 08–007–0001

Year	Maximum value (µg/m <sup>3</sup> )	2nd Maximum concentration (µg/m <sup>3</sup> )	Monitoring site
1998 .....	66	66	Town Hall.
1999 .....	138	82	Town Hall.
2000 .....	165	87	Town Hall.
2001 .....	123	121	Town Hall.
2001 .....	66	61	High School.
2002 .....	107	82	High School.
2003 .....	123	111	High School.
2004 .....	79	61	High School.
2005 .....	82	77	High School.
2006 .....	122	53	High School.
2007 .....	102	59	High School.
2008 .....	149	74	High School.
2009 .....	<sup>4</sup> 188	<sup>4</sup> 182	High School.
2010 .....	<sup>5</sup> 117	73	High School.
2011 .....	109	81	High School.
2012 .....	147	93	High School.

Table 2 below shows the estimated number of exceedances for the Pagosa Springs PM<sub>10</sub> maintenance area for the three-year periods of 1998 through 2000, 1999 through 2001, 2000 through 2002, 2001 through 2003, 2002 through 2004, 2003 through 2005, 2004 through 2006, 2005 through 2007, 2006 through 2008, 2007 through 2009, 2008 through 2010, 2009 through 2011, and 2010 through 2012. To attain the standard, the three-year average number of expected exceedances (values greater than 150 µg/m<sup>3</sup>) must be less than or equal to one. The table reflects continuous attainment of the PM<sub>10</sub> NAAQS.

<sup>4</sup> As noted above, it is believed that these two exceedances were impacted by regional dust storms in Pagosa Springs in 2009. Also, as noted above, exceedances that occurred on March 22 and April 3, 2009 were flagged by Colorado as exceptional events and received concurrence from EPA. Colorado also flagged a value of 100 µg/m<sup>3</sup> that was recorded on March 29, 2009. A dust storm on that date caused one exceedance of the PM<sub>10</sub> NAAQS elsewhere in western Colorado. However, the 100 µg/m<sup>3</sup> value in Pagosa Springs was not eligible for consideration under EPA's exceptional events rule because it was not an exceedance of the NAAQS. The highest two samples in 2009 not identified by Colorado to be impacted by regional dust storms were samples of 75 and 73 µg/m<sup>3</sup>.

TABLE 2—PAGOSA SPRINGS PM<sub>10</sub> ESTIMATED EXCEEDANCES BASED ON DATA FROM TOWN HALL AND HIGH SCHOOL MONITORING SITES, AQS IDENTIFICATION NUMBER 08–007–0001

Design value period	3-Year estimated number of exceedances
1998–2000 .....	0
1999–2001 .....	0
2000–2002 .....	0.33
2001–2003 .....	0
2002–2004 .....	0
2003–2005 .....	0
2004–2006 .....	0
2005–2007 .....	0
2006–2008 .....	0
2007–2009 .....	0.7
2008–2010 .....	0.7
2009–2011 .....	0.7
2010–2012 .....	0

<sup>5</sup> The 117 µg/m<sup>3</sup> value recorded on March 31, 2010 was flagged by Colorado as impacted by a regional dust storm. Since it was not an exceedance of the NAAQS, it was not eligible for consideration under EPA's exceptional events rule.

### III. What was the State's process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to EPA.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan on November 19, 2009. The AQCC approved and adopted the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan during this hearing. The Governor's designee submitted the revised plan to EPA on March 31, 2010.

We have evaluated the revised maintenance plan and have determined that the State met the requirements for reasonable public notice and public hearing under section 110(a)(2) of the CAA. On September 30, 2010, by operation of law under CAA section 110(k)(1)(B), the revised maintenance plan was deemed to have met the minimum "completeness" criteria found in 40 CFR part 51, appendix V.

#### IV. EPA's Evaluation of the Revised Pagosa Springs PM<sub>10</sub> Maintenance Plan

The following are the key elements of a maintenance plan for PM<sub>10</sub>: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Transportation Conformity Requirements/Motor Vehicle Emission Budget for PM<sub>10</sub>. Below, we describe our evaluation of these elements as they pertain to the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan.

##### A. Emission Inventory

The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan includes three inventories of daily PM<sub>10</sub> emissions for the Pagosa Springs area, one for 2007 as the base year, one interim inventory for 2015, and one inventory for 2021 as the maintenance year. The APCD developed these emission inventories using EPA-approved emissions modeling methods and updated transportation and demographics data. Each emission inventory lists estimated PM<sub>10</sub> emissions for individual source categories within the Pagosa Springs PM<sub>10</sub> maintenance area. A more detailed description of the 2007, 2015 and 2021 inventories and information on model assumptions and parameters for each source category are contained in the State's PM<sub>10</sub> maintenance plan Technical Support Document (TSD). The inventories include the following source categories: Commercial cooking, construction, fuel combustion, non-road, structure fires, wood burning, unpaved road dust, paved road dust, highway vehicles, and agriculture. We find that Colorado has prepared adequate emission inventories for the area.

##### B. Maintenance Demonstration

The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan uses emission roll-forward modeling combined with chemical mass balance (CMB) analysis to demonstrate maintenance of the 24-hour PM<sub>10</sub> NAAQS through 2021. The State's CMB analysis examined the chemical composition of material on filters from Pagosa Springs air quality monitors to determine the relative contribution from the following source categories: Geologic, burning, nitrate, sulfate, and unknown. The State collected CMB data on five days in 1994, 2006, and 2008 when ambient PM<sub>10</sub> concentrations exceeded 100 µg/m<sup>3</sup>. The State then averaged the data for the source categories to create a "design day apportionment" for each category, as follows: Geologic—79.0%; burning—7.3%; nitrate—1.0%; sulfate—1.6%; and

unknown—11.1%. After subtracting background (8 µg/m<sup>3</sup>) from the design day concentration (102 µg/m<sup>3</sup>),<sup>6</sup> the State applied the CMB apportionments to apportion the design day concentration by source category. For example, the State apportioned 74.3 µg/m<sup>3</sup> of a total of 94 µg/m<sup>3</sup> to the geologic source category ( $94 \mu\text{g}/\text{m}^3 \times 0.790 = 74.3 \mu\text{g}/\text{m}^3$ ).

Using assumptions about the inventory source categories that contributed to the CMB categories, the State applied the percent change in emissions for the relevant inventory source categories between 2007 and 2021 to "roll-forward" the CMB apportionments to 2021. For example, the State determined that the inventory source categories of unpaved road dust, paved road dust, and highway vehicles contribute all of the geologic emissions accounted for in the CMB analysis. The State's inventories reflect that emissions from these source categories are estimated to grow by 54.9% between 2007 and 2021. Applying this growth factor, the State estimated that the 74.3 µg/m<sup>3</sup> of PM<sub>10</sub> resulting from geologic materials would grow to 115.1 µg/m<sup>3</sup> in 2021.

Applying this methodology, the State projected a total concentration of PM<sub>10</sub> in 2021 of 146.3 µg/m<sup>3</sup>, which includes background. This value is below the PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup> and, thus, is consistent with maintenance.

To account for new data acquired since the submission of the State's Plan, we evaluated the 2010–2012 data in AQS to determine whether maintenance would be demonstrated using a more recent design value as a starting point. Excluding the exceedances in 2010 that were caused by high wind exceptional events, the third high concentration in 2010–2012 was 109 µg/m<sup>3</sup>, which was recorded on March 21, 2011. As noted, the State's emissions inventories contain emissions estimates for 2007, 2015, and 2021. An examination of these inventories reveals that total emissions in 2015 represent a point on a line of near linear growth from 2007 to 2021.

Acknowledging that the State's analysis is complete, we used a simpler total emissions roll-forward analysis rather than the CMB-apportioned analysis the State used in projecting 2006–2008 data in order to estimate emissions growth from 2011 to 2021 and ensure that growth in emissions would result in PM<sub>10</sub> remaining below the

NAAQS. We did this to evaluate future maintenance in light of the somewhat higher 2010–2012 design value, compared to the 2006–2008 design value Colorado evaluated. The total emissions roll-forward approach produces a higher projected concentration than does the State's CMB-apportioned method. We first removed the 8 µg/m<sup>3</sup> background concentration from the 109 µg/m<sup>3</sup>, which left 101 µg/m<sup>3</sup>. Next, relying on the linear growth in emissions, we estimated 2011 emissions would grow 32.9 percent by 2021.<sup>7</sup> Using this factor, we projected the 101 µg/m<sup>3</sup> from 2011 forward to 2021 to arrive at a concentration of 134.2 µg/m<sup>3</sup>. We then added the 8 µg/m<sup>3</sup> of background to this value to predict a total concentration in 2021 of 142.2 µg/m<sup>3</sup>. This value is below the PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup> and, thus, is consistent with maintenance.

##### C. Monitoring Network/Verification of Continued Attainment

In the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan, the State commits to continue to operate an air quality monitoring network in accordance with 40 CFR part 58 and the EPA-approved Colorado Monitoring SIP Element to verify continued attainment of the PM<sub>10</sub> NAAQS. This includes the continued operation of a PM<sub>10</sub> monitor in the Pagosa Springs area, which the State will rely on to track PM<sub>10</sub> emissions in the maintenance area. We are proposing to approve this commitment as satisfying the relevant requirements.

##### D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement the State has identified contingency measures along with a schedule for the development and implementation of such measures. The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan indicates that, upon notification of an exceedance of the PM<sub>10</sub> NAAQS, the APCD and local government staff in the Pagosa Springs

<sup>6</sup> Based on EPA guidance, the State determined the design day concentration to be the third highest 24-hour maximum PM<sub>10</sub> value recorded in the Pagosa Springs area from 2006–2008. It was recorded in 2007.

<sup>7</sup> Total emissions in 2007 were 184.3 tons/year, while total emissions were projected to be 236.1 tons/year in 2015 and 282.1 tons/year in 2021; these values are nearly collinear. Updating the roll forward for growth from a 2011 monitored value to 2021 requires a projection of the growth in emissions from 2011 to 2021. Linear emissions growth from 2007 to 2011 is  $(282.1 \text{ tons/year} - 184.3 \text{ tons/year}) / (2011 - 2007) = 27.9 \text{ tons/year}$ , bringing 2011 emissions to  $(184.3 + 27.9) = 212.2 \text{ tons}$ . Growth from 2011 to 2021, therefore, is  $(282.1 \text{ tons/year} - 212.2 \text{ tons/year}) / 212.2 \text{ tons/year} \times 100\% = 32.9\%$ .

area will develop appropriate contingency measures intended to prevent or correct a violation of the PM<sub>10</sub> standard. According to the plan, notification to EPA and local governments of any exceedance will occur no later than 45 days and the process will be completed within six months of the notification. Upon a violation, a public hearing process at the State and local level will begin. The AQCC may endorse or approve local measures, or it may adopt State enforceable measures. The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan states that contingency measures will be adopted and fully implemented within one year of a violation.

The State identifies the following as potential contingency measures in the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan: (1) Increased street sweeping requirements; (2) additional road paving requirements; (3) more stringent street sand specifications; (4) voluntary or mandatory coal and/or wood burning curtailment; (5) bans on all coal and/or wood burning; (6) expanded use of alternative de-icers; (7) re-establishing new source review permitting requirements for stationary sources; (8) transportation control measures designed to reduce vehicle miles traveled; and (9) other emission control measures appropriate for the area based on the following considerations: cost effectiveness, PM<sub>10</sub> emission reduction potential, economic and social concerns, and/or other factors.

We find that the contingency measures provided in the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA, with the exception of “voluntary coal and/or wood burning curtailment.” While we have not required that potential contingency measures be effective without further action by the State, we interpret the CAA as requiring measures that will be enforceable. Voluntary measures may not be widely implemented and, thus, cannot be relied on to ensure prompt emission reductions to correct a violation. Thus, we are proposing to disapprove the listing of “voluntary coal and/or wood burning curtailment” as a potential contingency measure.

#### *E. Transportation Conformity Requirements: Motor Vehicle Emission Budget for PM<sub>10</sub>*

Transportation conformity is required by section 176(c) of the CAA. EPA’s conformity rule at 40 CFR part 93 requires that transportation plans, programs, and projects conform to SIPs

and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget(s) (MVEB(s)) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. Further information concerning EPA’s interpretations regarding MVEBs can be found in the preamble to EPA’s November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan contains a single MVEB of 946 lbs/day of PM<sub>10</sub> for the year 2021, the maintenance year. Once the State submitted the revised plan with the 2021 MVEB to EPA for approval, 40 CFR 93.118 required that EPA determine whether the MVEB was adequate.

Our criteria for determining whether a SIP’s MVEB is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (see 62 FR 43780). Our process for determining adequacy is described in our July 1, 2004 Transportation Conformity Rule Amendments (see 69 FR 40004) and in relevant guidance.<sup>8</sup> We used these resources in making our adequacy determination described below.

On November 22, 2010, EPA announced the availability of the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan, and the PM<sub>10</sub> MVEB, on EPA’s transportation conformity adequacy Web site. EPA solicited public comment on the MVEB, and the public comment period closed on December 22, 2010. We did not receive any comments. This information is available at EPA’s conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/reg8sips.htm#co>

<sup>8</sup> “Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards” (EPA420–B–04–012 July, 2004).

By letter to the Colorado Department of Public Health and Environment dated March 17, 2011, EPA found that the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan and the 2021 PM<sub>10</sub> MVEB were adequate for transportation conformity purposes.<sup>9</sup> However, we noted in our letter that the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan did not discuss the PM<sub>10</sub> MVEB for 2012 of 7,486 lbs/day from the original PM<sub>10</sub> maintenance plan that EPA approved in 2001 (see 66 FR 32556, June 15, 2001).

According to 40 CFR 93.118(e)(1), the EPA-approved 2012 PM<sub>10</sub> MVEB must continue to be used for analysis years 2012 through 2020 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2012 PM<sub>10</sub> MVEB and EPA approves the SIP revision. The revised Pagosa Springs PM<sub>10</sub> Maintenance Plan did not revise the previously-approved 2012 PM<sub>10</sub> MVEB nor establish a new MVEB for 2012. Accordingly, the MVEB “. . . for the most recent prior year . . .” (i.e., 2012) from the original maintenance plan must continue to be used (see 40 CFR 93.118(b)(1)(ii) and (b)(2)(iv)).

We note that there is a considerable difference between the 2021 and 2012 budgets—946 lbs/day versus 7,486 lbs/day. This is largely an artifact of changes in the methods, models, and emission factors used to estimate mobile source emissions. The 2021 MVEB is consistent with the State’s 2021 emissions inventory for vehicle exhaust and road dust, and, thus, is consistent with the State’s maintenance demonstration for 2021.

The discrepancy between the 2012 and 2021 MVEBs is not a significant issue for several reasons. As a practical matter, the 2021 MVEB of 946 lbs/day of PM<sub>10</sub> would be controlling for any conformity determination involving the relevant years because conformity would have to be shown to both the 2012 MVEB and the 2021 MVEB. Also, for any maintenance plan like the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan that only establishes a MVEB for the last year of the maintenance plan, 40 CFR 93.118(b)(2)(i) requires that the demonstration of consistency with the budget be accompanied by a qualitative finding that there are no factors that would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year

<sup>9</sup> In a *Federal Register* notice dated August 2, 2011, we notified the public of our finding (see 76 FR 46288). This adequacy determination became effective on August 17, 2011.

of the maintenance plan. Therefore, when a conformity determination is prepared which assesses conformity for the years before 2021, the 2021 MVEB and the underlying assumptions supporting it would have to be considered. Finally, 40 CFR 93.110 requires the use of the latest planning assumptions in conformity determinations. Thus, the most current motor vehicle and road dust emission factors would need to be used, and we expect the analysis would show greatly reduced PM<sub>10</sub> motor vehicle and road dust emissions from those calculated in the first maintenance plan. In view of the above, EPA is proposing to approve the 2021 PM<sub>10</sub> MVEB of 946 lbs/day.

#### V. Proposed Action

We are proposing to approve the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan that was submitted to us on March 31, 2010, with one exception. We are proposing to disapprove the listing of “voluntary coal and/or wood burning curtailment” as a potential contingency measure in section 5.F.3 of the revised Pagosa Springs PM<sub>10</sub> Maintenance Plan. We are proposing to approve the remainder of the revised maintenance plan because it demonstrates maintenance through 2021 as required by CAA section 175A(b), retains the control measures from the initial PM<sub>10</sub> maintenance plan that EPA approved on June 15, 2001, and meets other CAA requirements for a section 175A maintenance plan. We are proposing to exclude from use in determining that Pagosa Springs continues to attain the 24-hour PM<sub>10</sub> NAAQS exceedances of the 24-hour PM<sub>10</sub> NAAQS that were recorded at the Pagosa Springs PM<sub>10</sub> monitor on March 22, 2009, April 3, 2009, April 5, 2010, April 28, 2010, April 29, 2010, May 11, 2010, and May 22, 2010 because they meet the criteria for exceptional events caused by high wind natural events. We are also proposing to approve the revised maintenance plan’s 2021 transportation conformity MVEB for PM<sub>10</sub> of 946 lbs/day.

#### VI. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k), 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting federal requirements and does not propose to impose additional

requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP would not be approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: December 16, 2013.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

[FR Doc. 2013–31110 Filed 12–26–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 405

[CMS–6055–P]

RIN 0938–AS03

### Medicare Program; Right of Appeal for Medicare Secondary Payer Determination Relating to Liability Insurance (Including Self-Insurance), No Fault Insurance, and Workers’ Compensation Laws and Plans

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement provisions of the Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act) which require us to provide a right of appeal and an appeal process for liability insurance (including self-insurance), no-fault insurance, and workers’ compensation laws or plans when Medicare pursues a Medicare Secondary Payer (MSP) recovery claim directly from the liability insurance (including self-insurance), no fault insurance, or workers’ compensation law or plan.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided, no later than 5 p.m. on February 25, 2014.

**ADDRESSES:** In commenting, please refer to file code CMS–6055–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the “More Search Options” tab.

2. *By regular mail.* You may mail written comments to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6055–P, P.O. Box 8013, Baltimore, MD 21244–8013.