

(1) Rule 61.4, "Transfer of Volatile Organic Compounds into Vehicle Fuel Tanks," revised on March 26, 2008.

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(4) Rule 448, "Gasoline Transfer into Stationary Storage Containers," amended on February 26, 2009.

(5) Rule 449, "Transfer of Gasoline into Vehicle Fuel Tanks," amended on February 26, 2009.

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(2) Rule 214, "Phase I Vapor Recovery Requirements," amended on April 25, 2011.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: EPA-R10-OAR-2010-0914; FRL-9764-7]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Eagle River PM₁₀ Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) submitted by the State of Alaska on September 29, 2010 for the Eagle River nonattainment area (Eagle River NAA) and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

DATES: This direct final rule will be effective March 8, 2013, without further notice, unless EPA receives adverse comments by February 6, 2013. If adverse comments are 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: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2010-0914, by any of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *Email*: R10-Public Comments@epa.gov.

- *Mail*: Justin A. Spenillo, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101.

- *Hand Delivery/Courier*: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Justin A. Spenillo, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2010-0914. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 *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.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available

either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553-6125, *spenillo.justin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, it is intended to refer to EPA.

Table of Contents

- I. This Action
- II. Background
 - A. PM₁₀ NAAQS
 - B. Eagle River NAA and Planning Background
- III. Requirements for Redesignation
 - A. CAA Requirements for Redesignation of Nonattainment Areas
 - B. The LMP Option for PM₁₀ Nonattainment Areas
 - C. Conformity Under the LMP Option
- IV. Review of the Alaska Submittal Addressing the Requirements for Redesignation and LMPs
 - A. Has the Eagle River NAA attained the applicable NAAQS?
 - B. Does the Eagle River NAA have a fully approved SIP under section 110(k) of the CAA?
 - C. Has the State met all applicable requirements under section 110 and part D of the CAA?
 - D. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?
 - E. Does the area have a fully approved maintenance plan pursuant to section 175A of the CAA?
 - F. Has the State demonstrated that the Eagle River NAA qualifies for the LMP option?
 - G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?
 - H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58?
 - I. Does the plan meet the Clean Air Act requirements for contingency provisions?
 - J. Has the State met conformity requirements?
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. This Action

EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) submitted by the State of Alaska on September 29, 2010, for the Eagle River nonattainment area (Eagle River NAA) and to concurrently redesignate the area to attainment for the PM₁₀ NAAQS. EPA has reviewed air quality

data for the area and determined that the Eagle River NAA attained the PM₁₀ NAAQS by the required attainment date, and that monitoring data continue to show attainment. EPA also approves exclusion of data from a high wind exceptional event on October 30, 2009.

II. Background

A. PM₁₀ NAAQS

“Particulate matter,” also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets. The size of particles is directly linked to their potential for causing health problems. EPA is concerned about particles that are 10 micrometers in diameter or smaller because those are the particles that generally pass through the throat and nose and enter the lungs. Once inhaled, these particles can affect the heart and lungs and cause serious adverse health effects. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy individuals may experience temporary symptoms from exposure to elevated levels of particle pollution.

On July 1, 1987, EPA promulgated a NAAQS for PM₁₀ (52 FR 24634). EPA established a 24-hour standard of 150 µg/m³ and an annual standard of 50 µg/m³, expressed as an annual arithmetic mean. EPA also promulgated secondary PM₁₀ standards that were identical to the primary standards. In a rulemaking action dated October 17, 2006, EPA retained the 24-hour PM₁₀ standard but revoked the annual PM₁₀ standard (71 FR 61144, effective December 18, 2006).

B. Eagle River NAA and Planning Background

On August 7, 1987, EPA designated the “Anchorage (Eagle River)” (referred to as Eagle River henceforth) area as a PM₁₀ nonattainment area due to measured violations of the 24-hour PM₁₀ standard (52 FR 29383). The notice announcing the designation upon enactment of the 1990 CAA Amendments was published on March 15, 1991 (56 FR 11101). On November 6, 1991, the Eagle River NAA was subsequently classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA (56 FR 56694).

After the Eagle River NAA was designated nonattainment for PM₁₀, the Alaska Department of Environmental Conservation (ADEC) and Municipality of Anchorage (MOA) worked with the community of Eagle River to develop a plan to bring the area into attainment no later than December 31, 1994. The State submitted the plan to EPA on October

15, 1991, as a moderate PM₁₀ State Implementation Plan (SIP) under section 189(a) of the CAA. The primary control measure submitted by the State was a comprehensive road paving program. EPA took final action to approve the State’s moderate PM₁₀ SIP on August 13, 1993 (58 FR 43084). On October 19, 2010, EPA made an attainment determination that the Eagle River nonattainment area attained the PM₁₀ NAAQS (75 FR 64162).

The State of Alaska prepared a LMP and provided notice and an opportunity for public comment on the proposed plan. On September 29, 2010, the State submitted to EPA for approval the Eagle River PM₁₀ LMP and requested that EPA redesignate the Eagle River NAA to attainment for the PM₁₀ NAAQS.

III. Requirements for Redesignation

A. CAA Requirements for Redesignation of Nonattainment Areas

A nonattainment area can be redesignated to attainment after the area has measured air quality data showing the NAAQS has been attained and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I provide the criteria for redesignation (57 FR 13498, April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memo). The criteria for redesignation are:

1. The Administrator has determined that the area has attained the applicable NAAQS;
2. The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;
3. The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA;
4. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and
5. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

B. The LMP Option for PM₁₀ Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM₁₀ nonattainment areas seeking redesignation to attainment (Memo from

Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled “Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas” (LMP Option memo)). The LMP Option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas meeting the criteria outlined in the LMP Option memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP Option, the area should have attained the PM₁₀ NAAQS and, based upon the most recent five years of air quality data at all monitors in the area, the 24-hour design value should be at or below 98 µg/m³. If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the site is less than the site-specific critical design value (CDV). In addition, the area should expect only limited growth in on-road motor vehicle PM₁₀ emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP Option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the LMP Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA’s LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM₁₀ NAAQS would result. For transportation conformity purposes, EPA would conclude that

emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the “budget test” specified in 40 CFR 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

IV. Review of the Alaska Submittal Addressing the Requirements for Redesignation and LMPs

A. Has the Eagle River NAA attained the applicable NAAQS?

To demonstrate that an area has attained the PM₁₀ NAAQS States must submit an analysis of ambient air quality data from an ambient air monitoring network representing peak PM₁₀ concentrations. The data should be quality-assured and stored in the EPA Air Quality System database. EPA has reviewed air quality data for the area and has determined that the Eagle River NAA attained the PM₁₀ NAAQS¹ by the applicable attainment date of December 31, 1994, and continues to attain the PM₁₀ NAAQS. EPA’s analysis is described below.

The 24-hour PM₁₀ NAAQS is 150 µg/m³. An area has attained this 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58 including appendices).

A comprehensive air quality monitoring plan, meeting the requirements of 40 CFR part 58, was submitted by ADEC to EPA on January 18, 1980 (40 CFR 52. 70), and approved by EPA on April 15, 1981 (72 FR 21944). Updated monitoring plans have been subsequently submitted, with the most recent approval by EPA on October 25, 2012. The monitoring plan describes the Alaska monitoring network throughout the State, which includes site #02–020–1004 (Parkgate Site) in the Eagle River area. In the LMP submittal, ADEC States that the nonattainment designation was based on data collected at the Parkgate Site. With the exception of two volcanic eruptions and high wind exceptional events, a review of data from 1988 through the present show that PM₁₀ concentrations recorded at this site remain well below the 24-hour PM₁₀

NAAQS. In addition, ADEC states that the Parkgate Site is operated in compliance with EPA monitoring guidelines set forth in 40 CFR part 58, Ambient Air Quality Surveillance. More information on the monitoring plan can be found at http://dec.alaska.gov/air/am/am_airmonplan.htm.

Data from the Parkgate Site has been quality assured by ADEC and submitted to EPA’s Air Quality System (AQS), accessible through EPA’s AirData Web site at <http://www.epa.gov/airdata/>. To show attainment for the 24-hour PM₁₀ NAAQS the three most recent years of data, calendar years 2009–2011, must be below 1.0 Expected number of Exceedances (EE), as established in Appendix K to 40 CFR part 50. The Parkgate Site recorded one exceedance during the 2009–2011 period on October 30, 2009. ADEC has flagged this exceedance as being caused by a high wind exceptional event. Under EPA’s Exceptional Events Rule, the Agency may exclude data from a regulatory determination related to an exceedance or violation of the NAAQS if the State adequately demonstrates that an exceptional event caused the exceedance or violation. 40 CFR 50.1 and 50.14. For the reasons set forth in the AK Eagle River PM₁₀ October 30, 2009 Exceptional Event concurrence letter and analysis (November 2, 2012), EPA excluded data showing an exceedance on October 30, 2009 in determining whether the Eagle River NAA has attained the PM₁₀ NAAQS. ADEC also submitted an exceedance on October 31, 2009 for consideration as an exceptional event however this request was not approved as described in the concurrence letter. The concurrence letter explains how ADEC met its burden to demonstrate that the October 30, 2009 exceedance qualifies as an exceptional event. Based on this demonstration, the area’s EE was 0.4, which is well below the 1.0 upper limit. EPA therefore concludes that the area was not violating the PM₁₀ NAAQS during the three-year period 2009 to 2011 (Eagle River PM₁₀ NAAQS and LMP Determination, November 8, 2012).

B. Does the Eagle River NAA have a fully approved SIP under section 110(k) of the CAA?

To qualify for redesignation, the SIP for an area must be fully approved under section 110(k) of the CAA, and must satisfy all requirements that apply to the area. As discussed in Section II.B. above, Alaska submitted a moderate PM₁₀ SIP for the Eagle River NAA on October 15, 1991. EPA took final action to fully approve the State’s moderate PM₁₀ SIP on August 13, 1993 (58 FR

43084), as satisfying all requirements that apply to the area. Thus the area has a fully approved nonattainment area SIP under section 110(k) of CAA.

C. Has the State met all applicable requirements under section 110 and Part D of the CAA?

Section 107(d)(3)(E) of the CAA requires that a state containing a nonattainment area meet all applicable requirements under section 110 and Part D of the CAA for the area to be redesignated to attainment. EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Alaska meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. These requirements include, but are not limited to: Submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements (57 FR 13498, April 16, 1992). EPA’s approval of Alaska’s SIP for attainment and maintenance of national standards can be found at 40 CFR 52.72. For purposes of redesignation of the Eagle River PM₁₀ NAA, EPA has reviewed the Alaska SIP and finds that the State has satisfied all applicable requirements under CAA section 110(a)(2) for the PM₁₀ NAAQS.

(2) Part D Requirements

Part D of the CAA contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM₁₀ nonattainment areas must meet the general provisions of Subpart 1 and the specific PM₁₀ provisions in Subpart 4, “Additional Provisions for Particulate Matter Nonattainment Areas.” The following paragraphs discuss these

¹ Because the annual PM₁₀ standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM₁₀ standard.”

requirements as they apply to the Eagle River PM₁₀ NAA.

(2)(a) Part D, Section 172(c)(2)—Reasonable Further Progress

Section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble (57 FR 13538, April 16, 1992). CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the CAA defines RFP as “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” The requirements for reasonable further progress, identification of certain emissions increases and other measures needed for attainment were satisfied with the approved Eagle River PM₁₀ SIP (58 FR 43084). In the October 19, 2010 action (75 FR 64162), EPA determined that the Eagle River NAA attained the 24-hour PM₁₀ NAAQS by the December 31, 1994, attainment date. Therefore, EPA believes no further showing of RFP or quantitative milestones is necessary.

(2)(b) Part D, Section 172(c)(3)—Emissions Inventory

For redesignation, Section 172(c)(3) of CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Eagle River PM₁₀ NAA. Alaska included an emissions inventory for the Eagle River area for the year 2007 in the September 29, 2010 submittal. The inventory estimated emissions during spring break-up and fall freeze-up include: Dust from paved roads; wind-generated dust from roads, parking lots and un-vegetated areas; fireplaces and woodstoves; natural gas combustion; and motor vehicles exhaust, tire and brake wear. The emissions inventory included emissions estimates for unpaved roads for the initial SIP attainment plan (*Eagle River PM₁₀ Control Plan*), but all roads have been paved and so those emissions have not been included in the 2007 nor 2020 inventories. Emissions estimates for road dust and motor vehicle exhaust, brake wear, and tire wear were developed using the EPA-approved MOBILE6.2 model, and vehicle miles traveled estimates were obtained from the 2007 Chugiak-Eagle River Long Range Transportation Plan. The remaining emissions estimates were calculated using EPA approved AP-42

emission factors. EPA reviewed the inventory and associated calculations submitted by Alaska and believes that the 2007 Eagle River emissions inventory is current, accurate and comprehensive and therefore meets the requirements of section 172(c)(3) of the CAA.

(2)(c) Part D, Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR. The state must have an approved major NSR program that meets the requirements of CAA section 172(c)(5). EPA evaluated and initially approved the Alaska major NSR program on July 5, 1983 (48 FR 30623) and most recently approved revisions to Alaska's NSR program on February 11, 2011 (76 FR 7116). In the Eagle River PM₁₀ NAA, the requirements of the Part D NSR program will be replaced by the State's PSD program requirements upon the effective date of redesignation.

(2)(d) Part D, Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. On July 18, 1980 Alaska submitted a comprehensive air quality monitoring plan (40 CFR 52.70), meeting the requirements of 40 CFR part 58, to EPA. EPA approved the plan on April 15, 1981 (72 FR 21944). This monitoring plan has been updated, with the most recent approval by EPA on October 25, 2012 (Alaska Air Monitoring Plan Approval Letter, dated October 25, 2012). As described in section IV. A., ADEC operate a comprehensive monitoring network.

(2)(e) Part D, Section 172(c)(9)—Contingency Measures

The CAA requires that contingency measures take effect if an area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Because, as part of this action, EPA has determined the Eagle River NAA attained the PM₁₀ NAAQS by the applicable attainment date of December 31, 1994, contingency measures are no longer required under section 172(c)(9) of the CAA. However, contingency provisions are required for maintenance plans under Section 175A. See section VI. F. for a description of Alaska's maintenance plan contingency provisions.

(2)(f) Part D, Section 189(a), (c), and (e)—Additional Provisions for Particulate Matter Nonattainment Areas

Section 189(a), (c), and (e) apply to moderate PM₁₀ nonattainment areas. Any of these requirements which were applicable and due prior to the submission of the redesignation request must be fully approved into the SIP before redesignating the area to attainment. With respect to the Eagle River PM₁₀ NAA, these requirements include:

(a) Provisions to assure that reasonably available control measures were implemented by December 10, 1993 (section 189(a)(1)(C));

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable, but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable (section 189(a)(1)(B));

(c) Quantitative milestones which were achieved every three years and which demonstrate RFP toward attainment by December 31, 1994 (section 189(c)(1)); and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors except where the Administrator determined that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area (section 189(e)).

Provisions for reasonably available control measures, attainment demonstration, and RFP milestones were fully approved into the SIP upon EPA approval of the moderate PM₁₀ SIP for the Eagle River NAA on August 13, 1993 (58 FR 43084). EPA most recently approved revisions to Alaska's NSR program on February 9, 2011 (76 FR 7116). Alaska's major NSR rules include control requirements that apply to major stationary sources of PM₁₀ in nonattainment areas and attainment/unclassifiable areas. For the Eagle River area, EPA determined that major stationary sources do not contribute significantly to PM₁₀ levels in excess of the NAAQS. Therefore, in EPA's action to approve the moderate PM₁₀ SIP for Eagle River, EPA granted the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM₁₀ precursors (58 FR 43084).

D. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

Section 107(d)(3)(E)(iii) of the CAA provides that a nonattainment area may

not be redesignated unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP. Therefore, a State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions by demonstrating that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Permanent and enforceable control measures in the Eagle River moderate PM₁₀ SIP include road paving and surfacing projects to address fugitive dust. These controls were approved by EPA into the Eagle River PM₁₀ SIP, and they are both permanent and federally enforceable (58 FR 43084). As described in the submittal, the primary control measure relied on is the road paving program which either paved or surfaced all of the roads in the area by 2007. The program paved 22 miles of road which equals almost half of the roads in the area. The Municipality of Anchorage (MOA) commits itself to maintenance of the roads during their 10–15-year lifetime and resurfacing thereafter. The MOA also will work with the Alaska Department of Transportation and Public Facilities to limit the amount of silt allowed in winter traction sand as well as explore other road maintenance techniques that minimize road dust while still cleaning and maintaining safe roads.

EPA believes that areas that qualify for the LMP Option will meet the NAAQS, even under worst case meteorological conditions. Therefore, under the LMP Option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. A description of the LMP qualifying criteria and how the Eagle River area meets these criteria is provided below. By qualifying for the LMP Option, Alaska presumptively demonstrates that the air quality improvements in the Eagle River area are the result of permanent emission reductions and not a result of either economic trends or meteorology.

E. Does the area have a fully approved maintenance plan pursuant to section 175A of the CAA?

In this action, we are approving the LMP in accordance with the principles outlined in the LMP Option memo.

Upon the effective date of this action, the area will have a fully approved maintenance plan.

F. Has the State demonstrated that the Eagle River NAA qualifies for the LMP option?

The LMP Option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. In this action, EPA has determined that the Eagle River NAA attained the PM₁₀ NAAQS by the required attainment date, and continues to be in attainment with the PM₁₀ NAAQS. Please see section V. A. for a detailed discussion.

Second, the average design value (ADV) for the past five years of monitoring data must be at or below the critical design value (CDV). The CDV is a margin of safety value at which an area has been determined to have a one in ten probability of exceeding the NAAQS. The LMP Option memo provides two methods to review monitoring data for the purpose of determining qualification for the LMP Option. The first method is a comparison of a site's ADV with the CDV of 98 µg/m³ for the 24 hour PM₁₀ NAAQS and 40 µg/m³ for the annual PM₁₀ NAAQS. A second method that applies to the 24-hour PM₁₀ NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past five years of monitoring data. The State's submittal provides a comparison of five-year ADVs compared to the 24-hour CDV, as described in the first method for review of monitoring data to determine qualification for the LMP Option. Alaska's analysis demonstrates that the Eagle River NAA meets the LMP design value criteria for the period 2003–2007. Using EPA-recommended methodology, Alaska calculated the average 24-hour design value for the area to be 92.3 µg/m³, which is below the CDV of 98 µg/m³. Alaska did not include two events that they considered to be exceptional events on March 12, 2003 and December 2, 2007.

Given that the LMP memo requires that the most recent five years of data be used to determine LMP eligibility, EPA calculated average design values using more recent data from 2007–2011. EPA found that the Eagle River area meets the LMP design value criteria for both the 24-hour ADV (95 µg/m³ compared to the 98 µg/m³ 24 hr ADV) and the annual ADV (17 µg/m³ compared to the 40 µg/m³ annual ADV) (Eagle River PM₁₀ NAAQS and LMP Determination Memo, November 8, 2012). EPA's calculations did not include data from October 30, 2009, which EPA agreed was an

exceedance caused by an exceptional event. EPA finds that Eagle River meets the design value criteria outlined in the LMP Option memo.

Third, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP Option memo. Using the methodology outlined in attachment B, Alaska submitted an analysis of whether increased emissions from on-road mobile sources would increase PM₁₀ concentrations in the Eagle River NAA to levels that would threaten the assumption of maintenance that underlies the LMP policy. Based on monitoring data for the period 2003–2007, Alaska has determined that the Eagle River NAA passes the motor vehicle regional emissions analysis test. EPA has reviewed the calculations in Appendix A of the State's submittal and concurs with this conclusion.

As described above, the Eagle River NAA meets the qualification criteria set forth in the LMP Option memo and therefore qualifies for the LMP Option. The LMP Option memo also indicates that once a state selects the LMP Option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM₁₀ concentrations enough to requalify for the LMP Option. One possible approach the state could take is to implement contingency provisions. The State's submittal included a description of contingency provisions which are discussed in Section V. I. EPA believes the contingency provisions submitted by Alaska meet the requirements of CAA section 175A as outlined in the LMP Option memo.

As a result of the above analysis, EPA is approving the LMP for the Eagle River area and the State's request to redesignate the Eagle River NAA to attainment for PM₁₀.

G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?

Pursuant to the LMP Option memo, the state's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

Alaska's submittal includes an emissions inventory for the year 2007. After reviewing the 2007 emissions inventory and determining that it is current, accurate and complete, as well as reviewing monitoring data for the years 2003–2007, EPA has determined that the 2007 emissions inventory is representative of the attainment year inventory because the NAAQS was not violated during 2007. In addition, the year 2007 is representative of the level of emissions during the time period used to calculate the average design value because 2007 is one of the years during the five-year period used to calculate the design value (2003–2007). The submittal meets EPA guidance, as described above, for purposes of an attainment emissions inventory.

H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58?

PM₁₀ monitoring was established in the Eagle River area in 1985. ADEC currently maintains a PM₁₀ monitoring network which includes the Parkgate Site within the Eagle River area. This monitoring network was developed and has been maintained in accordance with Federal siting and design criteria in 40 CFR part 58 and in consultation with Region 10. EPA most recently approved Alaska's air monitoring plan on October 25, 2012 (Alaska Air Monitoring Plan Approval Letter, dated October 25, 2012). In the September 29, 2010 submittal, Alaska states that it will continue to monitor for PM₁₀ in the Eagle River NAA through the end of the maintenance planning period (2020).

I. Does the plan meet the Clean Air Act requirements for contingency provisions?

CAA Section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP Option memo and Calcagni memo, these contingency provisions are considered to be an enforceable part of the SIP. The plan should clearly identify the provisions to be adopted, a schedule and procedures for adoption and implementation, and a specific time limit for action by the state. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency provision, the contingency provision that would be adopted and implemented, and the schedule

indicating the time frame by which the state would adopt and implement the provision. The LMP Option memo and Calcagni memo state that EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

ADEC has included maintenance plan contingency provisions to ensure the area continues to meet the PM₁₀ NAAQS. Specifically, the submittal includes a list of potential contingency measures based on the primary sources of PM₁₀ identified in the emission inventory. These include traffic-related paved road dust, wind-blown dust from roadways, parking lots and cleared areas, and fireplaces and woodstoves. Traffic-related road dust and wind-blown dust contingency provisions include application of chemical dust palliatives based on a successful field study in 2008 during their spring break-up period, and the potential use of road sweeping. Another provision primarily directed at wind-blown dust would require that traction sand materials meet specifications which would reduce the amount of re-entrained dust. Fireplace and woodstove provisions would include curtailment scenarios if economics or meteorology increased the amount of PM₁₀ emissions generated by residential wood combustion.

The contingency provisions submitted by ADEC will be formally assessed by MOA within 30 days following the violation of the PM₁₀ NAAQS. Within 120 days a report, will be prepared and ultimately approved by ADEC. The report will assess existing controls and provide a recommendation with respect to the contingency provisions or alternatives. Actions will occur at the discretion of the Municipal Mayor and Assembly. Some measures may require changes to the local ordinances. The contingency provisions identify potential control measures and provide a specific schedule for review, recommendation, adoption and implementation. EPA believes the contingency provisions are adequate to meet CAA Section 175A requirements and the LMP Option memo.

J. Has the State met conformity requirements?

(1) Transportation Conformity

Under the LMP Option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a

NAAQS violation would result. While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

(b) Transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

(c) The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

In the 2012 adequacy finding for the Eagle River, Alaska Particulate Matter (PM₁₀) Limited Maintenance Plan, EPA determined that the Eagle River area met the criteria to be exempted from regional emissions analysis for PM₁₀ (77 FR 25164,² April 27, 2012). However, project level conformity requirements would continue to apply to the area. With EPA's approval of the LMP, the area continues to be exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above.

(2) General Conformity

For Federal actions required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new

² This adequacy finding for Eagle River AK incorrectly references a submission of date of September 20, 2011. The correct submission date was September 29, 2010.

violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that “the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP” (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Alaska has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

V. Final Action

EPA is taking direct final action to approve the LMP submitted by the State of Alaska for the Eagle River NAA and concurrently redesignate the area to attainment for the PM₁₀ NAAQS. EPA has reviewed air quality data for the area and determined that the Eagle River NAA attained the PM₁₀ NAAQS by the required attainment date, and that air monitoring data continue to show attainment.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 8, 2013 without further notice unless the Agency receives adverse comments by February 6, 2013.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such

comments are received, the public is advised that this rule will be effective on March 8, 2013 and no further action will be taken on the proposed rule.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 U.S.C. 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 U.S.C. 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the SIP is not 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.

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 action 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 March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 17, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR parts 52 and 81 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 C—Alaska

■ 2. Section 52.73 is amended by adding paragraph (e)(1) to read as follows:

§ 52.73 Approval of plans.

* * * * *

(e) * * *

(1) *Eagle River*. (i) EPA approves as a revision to the Alaska State Implementation Plan, the Eagle River PM-10 Limited Maintenance Plan (Volume II Sections III.D.2 of the State Air Quality Control Plan adopted

August 20, 2010, effective October 29, 2010, and Volume III Sections III.D.2.2 of the Appendices adopted August 20, 2010, effective October 29, 2010) submitted by the Alaska Department of Environmental Conservation on September 29, 2010.

(ii) [Reserved]

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PART 81—[AMENDED]

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

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

■ 4. In § 81.302, the table entitled “Alaska—PM-10” is amended by revising the entry for “Anchorage, Community of Eagle River” to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Anchorage Community of Eagle River	March 8, 2013	Attainment.		

* * * * *

[FR Doc. 2012-31431 Filed 1-4-13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604-1758-02]

RIN 0648-XC427

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the Atlantic migratory group southern zone to 1,500 lb (680 kg), round weight, per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, January 6, 2013, until 12:01 a.m., local time, March 1, 2013, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, or email: susan.gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 18 to the FMP (76 FR 82058, December 29, 2011) implemented a commercial annual catch limit (equal to the commercial quota) of 3.13 million lb (1.42 million kg) for the Atlantic migratory group of Spanish mackerel. Atlantic migratory group Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, Florida, boundary.

For the southern zone, seasonally variable trip limits are based on an adjusted commercial quota of 2.88 million lb (1.31 million kg). The adjusted commercial quota is calculated to allow continued harvest in the

southern zone at a set rate for the remainder of the current fishing year, February 28, 2013, in accordance with 50 CFR 622.44(b)(2). Beginning December 1, annually, the trip limit is unlimited on weekdays and limited to 1,500 lb (680 kg) of Spanish mackerel per day on weekends. After 75 percent of the adjusted commercial quota of Atlantic migratory group Spanish mackerel is taken until 100 percent of the adjusted commercial quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic group Spanish mackerel has been taken. Accordingly, the 1,500 lb (680 kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, January 6, 2013, until 12:01 a.m., local time, March 1, 2013, unless changed by subsequent notification in the **Federal Register**.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Atlantic migratory group Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.