

I. Background

A. *PM₁₀ National Ambient Air Quality Standards*

“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. The 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, the EPA promulgated two primary NAAQS for PM₁₀: a 24-hour standard of 150 micrograms per cubic meter (µg/m³) and an annual standard of 50 µg/m³, expressed as an annual arithmetic mean (52 FR 24634). The EPA also promulgated secondary PM₁₀ standards that were identical to the primary standards. In a rulemaking action effective December 18, 2006, the EPA retained the 24-hour PM₁₀ standard but revoked the annual PM₁₀ standard (71 FR 61144, October 17, 2006).

B. *Mendenhall Valley Nonattainment Area and Planning Background*

On August 7, 1987, the EPA identified a number of areas across the country as PM₁₀ “Group I” areas of concern, that is, areas with a 95% or greater likelihood of violating the PM₁₀ NAAQS and requiring substantial planning efforts (52 FR 29383). The Mendenhall Valley NAA was identified as a Group I area of concern.

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or Act) were designated nonattainment for PM₁₀ by operation of law and classified “moderate” upon enactment of the 1990 CAA Amendments. These areas included all former Group I PM₁₀ planning areas identified in 52 FR 29383 (August 7, 1987), and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM₁₀ prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM₁₀ upon enactment of the 1990 CAA Amendments, known as “initial” PM₁₀ nonattainment areas, was published on March 15, 1991 (56 FR 11101). The Mendenhall Valley NAA was one of

these initial moderate PM₁₀ nonattainment areas.

Geographically, the Mendenhall Valley NAA extends from the northern boundary of the Juneau Airport north through the Mendenhall Valley to the southern edge of the Mendenhall Glacier near Nugget Creek. To the east and west the Mendenhall Valley NAA is bounded by steep ridge crests rising more than 1000 feet from the valley floor.

All initial moderate PM₁₀ nonattainment areas had the same applicable attainment date of December 31, 1994. States containing initial moderate PM₁₀ nonattainment areas were required by section 189(a) of the CAA to develop and submit to the EPA by November 15, 1991, a state implementation plan (SIP) revision providing for implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM₁₀ NAAQS by the December 31, 1994 attainment date was practicable. On September 12, 1994, the original attainment date for the Mendenhall Valley NAA was extended to December 31, 1995, under the authority of section 188(d) of the CAA (60 FR 47276). The EPA fully approved the Mendenhall Valley attainment plan on March 24, 1994 (59 FR 13884). The control measures submitted by the State include a comprehensive residential wood combustion program and controls on fugitive road dust.

On July 16, 2010, the EPA published a **Federal Register** action with its determination that, based on air quality monitoring data collected at two sites (Floyd Dryden Middle School and Trio Street) in the Mendenhall Valley NAA, the Mendenhall Valley NAA had attained the NAAQS for PM₁₀ as of the extended attainment date of December 31, 1995 (75 FR 41379). The EPA noted that for the three-year period from 1993–1995, there were no violations of the annual PM₁₀ standard. In this attainment determination, the EPA also reviewed the air quality data collected at the Floyd Dryden monitoring site from January 1996 through December 2009 (the Trio Street site ceased operation in 1997), determined that there were no exceedances recorded at this monitoring site, and concluded that the area continued to be in compliance with the 24-hour PM₁₀ NAAQS during this period.

On May 8, 2009, the State submitted a LMP for the Mendenhall Valley NAA for approval and requested that the EPA redesignate the Mendenhall Valley NAA to attainment for the PM₁₀ NAAQS. In

today’s action, the EPA is approving the LMP for the Mendenhall Valley NAA and granting the request by the State to redesignate the area from nonattainment to attainment for PM₁₀.

C. *PM₁₀ Emissions Inventory of the Mendenhall Valley Nonattainment Area*

The emissions inventory that the Alaska Department of Environmental Conservation (ADEC) submitted with the Mendenhall Valley NAA PM₁₀ LMP, for base year 2004 and projected year 2018, identifies the significant contributions to PM₁₀ emissions as: wood smoke from residential wood combustion, fugitive dust from travel on unpaved roads; and fugitive dust from travel on paved roads. PM₁₀ emissions from wood burning were estimated to account for less than 2% of PM₁₀ emissions in 2004 and are projected to remain close to that level through 2018. Fugitive dust emissions from travel on unpaved roads were estimated to be 5.2% of PM₁₀ emissions in 2004 and are projected to be 5.3% in 2018. Fugitive dust emissions from travel on paved roads were estimated to account for 83% of PM₁₀ emissions in 2004, and are projected to account for 84% of emissions in 2018.

II. Requirements for Redesignation

A. *Clean Air Act (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, the 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. As a result, 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/m³.¹ 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 area 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 the 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, the 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).

III. Review of the Alaska Submittal Addressing the Requirements for Redesignation and LMP

A. Has the Mendenhall Valley 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 ambient air monitoring sites in the NAA representing peak PM₁₀ concentrations. The data should be stored in the EPA Air Quality System database. An area has attained the 24-hour PM₁₀ NAAQS of 150 µg/m³ if 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 at 40 CFR part 58, including appendices.

As stated in section I.B of this notice, in 2010 the EPA determined that the Mendenhall Valley NAA attained the PM₁₀ NAAQS by December 31, 1995 (75 FR 41379). In this previous action, the EPA also reviewed the air quality data collected at the Floyd Dryden monitoring site in the Mendenhall Valley NAA from January 1996 through December 2009, determined that there were no exceedances recorded at this monitoring site, and concluded that the area continued to be in compliance with the 24-hour PM₁₀ NAAQS during this period.

B. Does the Mendenhall Valley 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 Act, and must satisfy all requirements that apply

to the area. The EPA approved Alaska's attainment plan for the Mendenhall Valley NAA on March 24, 1994 (59 FR 13884). Thus, the area has a fully approved attainment area SIP under section 110(k) of the Act.

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 must meet all applicable requirements under section 110 and part D of the CAA for the area to be redesignated to attainment. The 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. CAA Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for attainment plans. These requirements include, but are not limited to: submittal of a SIP that has been adopted by the state after reasonable opportunity for 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 April 16, 1992 General Preamble (57 FR 13498) for further explanation of these requirements. For purposes of this redesignation, the EPA review of the Alaska SIP shows that the State has satisfied the requirements of section 110(a)(2) of the Act. Further, in 40 CFR 52.72, the EPA has approved Alaska's plan for the attainment and maintenance of the national standards under section 110.

2. CAA Part D Requirements

Part D of the Act 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 "Non-attainment Areas in general", and the specific PM₁₀ provisions in subpart 4 "Additional Provisions for Particulate Matter Nonattainment Areas". The

¹ On October 17, 2006, subsequent to the issuance of the 2001 LMP option Memo, the EPA revoked the annual PM₁₀ standard (71 FR 61114).

following paragraphs discuss these requirements as they apply to the Mendenhall Valley NAA.

2(a). Part D, Subpart 1, Section 172(c) Reasonable Further Progress (RFP)

Subpart 1, section 172(c) of the Act contains general requirements for nonattainment area plans, including reasonable further progress. The requirements for RFP, and identification of other measures needed for attainment, were satisfied with the approval of the Mendenhall Valley attainment plan (59 FR 13884, March 24, 1994).

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

For redesignations, section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources in the PM₁₀ nonattainment area. Alaska included with its submittal a 2004 baseline year emissions inventory and projected emissions for 2018. The requirement for a current, accurate and comprehensive emission inventory is satisfied by the emissions inventory contained in the Mendenhall Valley LMP.

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

The State must have an approved NSR program that meets the requirements of CAA section 172(c)(5). Alaska's NSR program was originally approved into the Alaska SIP by the EPA on July 5, 1983, and has been revised several times. The EPA most recently approved Alaska's NSR program on August 14, 2007 (72 FR 45378). In the Mendenhall Valley, the requirements of the part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) requirements upon the effective date of redesignation. Alaska's PSD program was originally approved into the SIP by the EPA on July 5, 1983, and has been revised several times. The EPA most recently approved Alaska's regulations on February 9, 2011, as meeting the requirements of part C for preventing significant deterioration of air quality (76 FR 7116).

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 accord with 40 CFR part 58 to verify the attainment status of the area. From 1986 until the present, the State of Alaska has operated a PM₁₀ monitor at the Floyd Dryden Middle School in the Mendenhall

Valley. In the LMP that we are approving today, the State commits to continued operation of a monitoring network that meets the EPA network design and siting requirements set forth in 40 CFR part 58.

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

The CAA requires that contingency measures take effect if the area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Because the Mendenhall Valley area attained the NAAQS for PM₁₀ by the attainment date of December 31, 1995, contingency measures are no longer required under section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under section 175(a)(d). Alaska provided contingency measures in the LMP. We describe the contingency measures in our evaluation of the LMP in section III.I below.

2(f). Part D, Subpart 4

Part D subpart 4, sections 189(a), (c) and (e) of the CAA apply to any moderate nonattainment area before the area can be redesignated to attainment. Any of these requirements which were applicable to the submission of the redesignation request must be fully approved into the SIP before redesignating the area to attainment. These requirements include the following:

(a) Provisions to assure that reasonably available control (RACM) measures were implemented by December 10, 1993;

(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;

(c) Quantitative milestones which were achieved every three years and which demonstrate reasonable further progress toward attainment by December 31, 1994; 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.

All of the above provisions were fully approved into the SIP upon the EPA approval of the PM₁₀ attainment plan for the Mendenhall Valley NAA on March 24, 1994 (59 FR 13884).

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 the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP. Therefore, the state must be able to demonstrate that the improvement in air quality is due to permanent and enforceable emission reductions. This demonstration 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 Mendenhall Valley NAA SIP are identified in the "Control Plan for Mendenhall Valley of Juneau," state-effective July 8, 1993, and approved into the SIP on March 24, 1994 (59 FR 13884). These control measures, which include RACM for fugitive dust and enforceable wood smoke ordinances, continue to remain in the SIP. In addition, ADEC revised 18 Alaska Administrative Code (AAC) 50.075 to reference an updated ordinance titled "An Ordinance Amending the Woodsmoke Control Program Regarding Solid Fuel-Fired Burning Devices, Serial No. 2008-28" that requires more stringent controls on solid fuel-fired devices, lowers the particulate matter threshold for calling air pollution emergencies, and imposes restrictions on outdoor burning. These measures strengthen PM₁₀ emission controls in the Mendenhall Valley NAA over the previously enacted Juneau woodsmoke ordinance approved by EPA in 1994 (59 FR 13884). EPA is therefore approving revised 18 AAC 50.075 and the ordinance referenced in 18 AAC 50.075(c) as measures that strengthen the SIP.

EPA is taking no action on 18 AAC 50.030, State Air Quality Control Plan, which adopts by reference Volumes II and III of the State Air Quality Control Plan and other documents (as a matter of state law), whether or not they have yet been submitted to or approved by the EPA. We are taking no action on the revisions to 18 AAC 50.030 because EPA takes action directly, as appropriate, on the specific provisions in the State Air Quality Control Plan that have been submitted by ADEC, so it is unnecessary for EPA to approve 18 AAC 50.030. The federally-approved

SIP consists only of regulations and other requirements that have been submitted by ADEC and approved by EPA.

The EPA has concluded that areas that qualify for the LMP Option will meet the NAAQS, even under worst case meteorological conditions. Under the LMP Option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. Alaska has demonstrated that the air quality improvements in the Mendenhall Valley NAA are the result of permanent emission reductions and not a result of either economic trends or meteorology by qualifying for the LMP Option. A description of the LMP qualifying criteria and how the Mendenhall Valley area meets these criteria are provided in the following sections.

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

In this action, we are approving the Mendenhall Valley 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 Mendenhall Valley 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. As stated above in section III.A, the EPA has determined that the Mendenhall Valley NAA has been in attainment of the PM₁₀ NAAQS since 1995 and continued to meet the PM₁₀ NAAQS for the period 2007–2011, which is the most recent five years of data.

Second, in order to qualify for the LMP Option, the 24-hour PM₁₀ annual design value must be at or below 98 µg/m³, based on the most recent five years of air quality data at all monitors in the area, and there should be no violations of the PM₁₀ standard at any monitor in the nonattainment area. To determine if the Mendenhall Valley NAA meets these requirements, the EPA reviewed the most recent five years of data (2007–2011) from the Floyd Dryden monitoring site to determine if the 24-hour annual design value was at or below 98 µg/m³, which would qualify the area for the LMP Option. However, in reviewing the 2007–2011 data from the Floyd Dryden monitor for that period, the EPA found that one quarter in 2008 and one quarter in 2009 had data completeness below 75%, the level needed to allow use of data to calculate

the annual design value. Therefore, to use data for these quarters to determine a 24-hour annual design value, data substitution was used pursuant to the EPA regulation (40 CFR part 50, Appendix K, § 2.3(b)) and guidance (Guidelines on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards, EPA 450/4–87/005, April 1987). For this case, data substitution was performed using the Tabular Estimation Method, which is one of the methods identified in the “PM₁₀ SIP Development Guideline” (EPA-450/2–86–001, June 1987). A more detailed description of this data substitution method, and the comparison to three other acceptable data substitution methods, are discussed in the technical support document (TSD) which can be found in the docket for this final rule (Memorandum by Chris Hall dated August 23, 2012). Based on the data substitution performed using the Tabular Estimation Method, the EPA determined that the 24-hour annual design value for the Mendenhall Valley NAA for 2007–2011 was 45 µg/m³. Also, there have been no violations of the PM₁₀ standard at any monitor in the nonattainment area over the past five years.

Third, the area must meet the motor vehicle regional emissions analysis test as required in the LMP Option Memo. The State’s submittal demonstrates that when the PM₁₀ design value for the Mendenhall Valley NAA is adjusted for future on-road mobile emissions, the annual design value for Mendenhall Valley NAA is 56.8 µg/m³. This value is substantially less than the LMP threshold value of 98 µg/m³, so the Mendenhall Valley NAA also qualifies for the LMP Option based on this criterion. Therefore, the Mendenhall Valley NAA meets the above three requirements to qualify 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. In the Mendenhall Valley LMP, the State commits to evaluate, on an annual basis, compliance with the LMP criteria within the Mendenhall Valley NAA.

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 one of the years associated with air quality data used to determine whether the area meets the applicability criteria for the LMP Option. If the attainment inventory is not for one of the most recent five years, but the state can show that the attainment inventory did not change significantly during that five-year period, it may be still used to satisfy the LMP Option requirements. The state should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

For the Mendenhall Valley NAA, Alaska completed an attainment year inventory for 2004. After reviewing the 2004 emissions inventory and determining that it is current, accurate and complete, the EPA has determined that the 2004 emissions inventory is representative of the attainment year inventory. Alaska demonstrated that the emissions inventory submitted with the LMP for the calendar year 2004 is representative of the level of emissions during the time period used to determine attainment of the NAAQS (1995–2004). In addition, since the projected population growth rate of the Juneau area, which includes the Mendenhall Valley NAA, is less than 1.0% per year (see in the docket, SIP submittal Volume III, Appendix III.D.3.8), the EPA believes that the 2004 emission inventory is also representative of the most recent five year period (2007–2011) for which air quality data was used to determine if the area meets the applicability criteria of the LMP Option. Thus, the EPA has determined that the Mendenhall Valley LMP submittal meets the requirements of the LMP Option Memo, 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?

Alaska conducted PM₁₀ monitoring at three sites in the Mendenhall Valley in the 1980s and 1990s. This monitoring network was developed and has been maintained in accordance with Federal siting and design criteria as set forth in 40 CFR part 58, Appendices D and E, and in consultation with EPA Region 10. Currently, monitoring for PM₁₀ in the Mendenhall Valley occurs at only one site, Floyd Dryden Middle School. In its LMP submittal, the State commits to continued operation of this monitoring site.

I. Does the plan meet the CAA requirements for contingency provisions?

CAA section 175A requires that a maintenance plan include contingency measures to ensure prompt correction of any violation of the standard that occurs after the redesignation of the area to attainment. As explained in the LMP Option Memo, these contingency measures do not have to be fully adopted at the time of redesignation. The Mendenhall Valley LMP describes the a process to identify and evaluate appropriate contingency measures in the event of a quality assured violation of the PM₁₀ NAAQS. Within 30 days following a violation of the PM₁₀ NAAQS, the City and Borough of Juneau and ADEC will convene to identify appropriate measures to control sources of the major PM₁₀ contributors to the Mendenhall Valley, fugitive dust and woodstoves, as described below.

Contingency measures that may be implemented for the control of fugitive dust include: controlling spills from trucks hauling particulate-producing materials, requiring installation of liners on truck beds, requiring watering of loads, requiring cargo that cannot be controlled by other measures to be covered, establishing controls on construction carryout and entrainment, requiring construction activities to be conducted so as to limit and remove the accumulation of dust generating materials, requiring paving of construction site access roads, requiring the developer of a construction site to clean soil from access roads and public roadways, requiring stabilization of unpaved areas adjacent to paved roads, controlling storm water runoff of eroded materials onto the streets, developing adequate storm water control systems, and requiring vegetation to stabilize the sides of roads.

Contingency measures that may be implemented to control wood smoke from residential wood heating include: establishing an enhanced public information campaign including education in stove selection, sizing, installation, operation, and maintenance practices to minimize emissions; encouraging improved performance of wood burning devices such as providing voluntary dryness certification programs for dealers and making inexpensive wood moisture checks available to wood burners; and providing inducements that would lead to reductions in the number of stoves and fireplaces.

The EPA believes that these contingency measures in the Mendenhall Valley LMP meet the requirements for the contingency

measures as outlined in the LMP Option Memo.

J. Has the State met conformity requirements?

(1) Transportation Conformity

Although the EPA's LMP Option Memo does not exempt an area from the need to demonstrate conformity, it allows the area to do so without submitting an emissions budget, if estimated population growth indicates that there will be no violation of the NAAQS due to population growth. For transportation purposes, the emissions in a qualifying LMP area need not be capped for the maintenance period and thus no regional emissions analysis is required. Regional transportation conformity is presumed due to the limited potential for emission growth in the NAA during the LMP period.

Under the LMP Option Memo, 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 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.

The EPA believes that the provisions in the Mendenhall Valley LMP adequately address the transportation conformity requirements of 40 CFR part 93, subpart A.

(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 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. The EPA believes that the provisions in the Mendenhall Valley LMP adequately address the General Conformity requirements of 40 CFR 93.158(a)(5)(i)(A).

IV. Final Action

The EPA is taking direct final action to approve the PM₁₀ LMP for the Mendenhall Valley NAA adopted on February 20, 2009, and submitted on May 8, 2009, by the State of Alaska, and to concurrently redesignate the Mendenhall Valley NAA to attainment for the PM₁₀ NAAQS. The EPA has determined that the Mendenhall Valley NAA has met all the CAA requirements for redesignation of a nonattainment area, and that the Mendenhall Valley NAA 24-hour design value for the most recent five years of data was below the threshold to qualify this area for the LMP Option. The EPA is also approving revised 18 AAC 50.075 and the ordinance referenced in 18 AAC 50.075(c) as SIP strengthening measures.

EPA is taking no action on 18 AAC 50.030, State Air Quality control Plan, for the reasons provided in section III.D.

V. Statutory and Executive Order Reviews

Under Section 110(k) of the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 the 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 this SIP is

not approved to apply in Indian country located in the state, and the 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. The 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 July 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

Air pollution control, Particulate matter, National parks, Wilderness areas.

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

Dated: March 12, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 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 52.70 is amended by adding paragraph (c)(42) to read as follows:

§ 52.70 Identification of plan.

(c) * * *

(42) On May 14, 2009, the Alaska Department of Environmental Conservation submitted a PM₁₀ limited maintenance plan and requested the redesignation of the Mendenhall Valley to attainment for PM₁₀. The state's limited maintenance plan and redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Alaska Administrative Code, Title 18, Chapter 50 Air Quality Control, Section 075 "Wood-fired heating devise visible emission standards," effective May 6, 2009.

(B) Alaska Department of Environmental Conservation State Air Quality Control Plan, Volume III, Appendix III.D.3.5, Ordinance of the City and Borough of Juneau, Alaska, Serial No. 2008-28, adopted February 20, 2009

- 3. Section 52.73 is amended by revising paragraph (e) to read as follows:

§ 52.73 Approval of plans.

* * * * *

(e) *Particulate matter.* (1) *Mendenhall Valley.* (i) The EPA approves as a revision to the Alaska State Implementation Plan, the Mendenhall Valley PM₁₀ Limited Maintenance Plan (Volume II, Section III.D.3 of the State Air Quality Control Plan, and Volume III.D.3.5, Volume III.D.3.8, and Volume III.D.3.9 of the Appendices (to Volume II, section III.D.3)) adopted February 20, 2009, and submitted by the Alaska Department of Environmental Conservation to the EPA on May 14, 2009.

(ii) [Reserved]

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

- 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 table entry for "Juneau" to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—PM—10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Juneau	7/8/2013			
City of Juneau		Attainment.		
Mendenhall Valley area.				
* * * * *				

* * * * *
 [FR Doc. 2013-10939 Filed 5-8-13; 8:45 am]
 BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS-WASO-NAGPRA-11600;
 PPWOCRADNO-PCU00RP14.550000]

RIN 1024-AD99

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Office of the Secretary, Interior.
ACTION: Final rule.

SUMMARY: This final rule revises regulations implementing the Native American Graves Protection and Repatriation Act for accuracy and consistency.

DATES: The rule is effective June 10, 2013.

FOR FURTHER INFORMATION CONTACT:

- *Mail:* Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., 8th Floor, Washington, DC 20005.
- *Telephone:* (202) 354-1479, Fax: (202) 371-5197. Email: sherry_hutt@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuance of appropriate regulations implementing and interpreting its provisions. NAGPRA addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations in certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Pursuant to Section 13 of NAGPRA (25 U.S.C.

3011), the Department of the Interior (Department) published the initial rules to implement NAGPRA in 1995 (60 FR 62158, December 4, 1995), which have been codified at 43 CFR Part 10. Subsequently, the Department published additional rules concerning:

- Civil penalties (68 FR 16354, April 3, 2003);
- Future applicability (72 FR 13189, March 21, 2007); and
- Disposition of culturally unidentifiable human remains (75 FR 12378, March 15, 2010).

Since 1995, minor inaccuracies or inconsistencies in 43 CFR Part 10 have been identified by or brought to the attention of the Department. On April 18, 2012, we published in the **Federal Register** proposed amendments to provide for factual accuracy and consistency throughout 43 CFR Part 10 by revising 43 CFR 10.2(c)(1), 10.2(c)(3), 10.4(d)(1)(iii), 10.5(b)(1)(i), 10.6(a)(2), 10.6(a)(2)(iii)(B), 10.8(e), 10.10(a)(1)(ii)(B), 10.10(b)(1)(ii)(B), 10.10(c)(2), 10.10(g), 10.11(b)(2)(ii), 10.12(c), 10.12(i)(3), 10.12(j)(1), 10.12(j)(6)(i), 10.12(k)(1), 10.12(k)(3), 10.13(c)(2), 10.15(c)(1), 10.15(c)(1)(ii), Appendix A, and Appendix B.

Summary of and Responses to Comments

The proposed rule to revise 43 CFR Part 10 for the purposes of accuracy and consistency was published in the **Federal Register** on April 18, 2012 (77 FR 23196). Public comment was invited for a 60-day period, ending June 18, 2012. The proposed rule also was posted on the National NAGPRA Program Web site. The Native American Graves Protection and Repatriation Review Committee commented on the proposed rule at a public meeting on May 10, 2012. In addition, 16 written comments on the proposed minor amendments, contained in 19 separate submissions, were received during the comment period from 13 Indian tribes, 2 Indian organizations, 3 Native Hawaiian organizations, 1 museum, 1 museum and scientific organization, 1 Federal entity, 1 individual member of

the public, and 1 other organization. All relevant comments on the proposed rule were considered during the final rulemaking. The comments we received that went beyond the scope of the proposed rule will be taken into account during any subsequent review and rulemaking regarding 43 CFR Part 10.

Authority

Comment 1: Ten commenters stated that the proposed rule revises the authority citation for Part 10, and that they oppose this purported revision.

Our Response: The proposed rule did not intend to revise the authority citation for Part 10. Based on the promulgation of 43 CFR 10.11 and related amendments in 2010 (75 FR 12378, March 15, 2010), the authority citation for Part 10 remains 25 U.S.C. 3001 *et seq.*, 16 U.S.C. 470dd(2), and 25 U.S.C. 9, and it is explicitly stated as such in this final rule.

The Mailing Address of the National NAGPRA Program

Comment 2: Seven commenters recommended that the Main Interior Building address currently in the regulations be retained as the mailing address for the National NAGPRA Program because that address is unlikely to change and because access to the internet for purposes of obtaining the current, direct mailing address of the National NAGPRA Program is not easily or universally accessible, particularly in rural, tribal communities.

Our Response: The rule revises the mailing address for the National NAGPRA Program in §§ 10.2(c)(3), 10.12(c), and 10.12(i)(3) by removing an indirect address and replacing it with the Web site address where the National NAGPRA Program's current, direct mailing address can always be found. The intent of this revision is to improve communications with the National NAGPRA Program. Communications that are not received in a timely manner could adversely affect the treatment of a NAGPRA grant request, a response to a NAGPRA civil penalty notice, or a request to the Review Committee. By