

library or archives to which the preemptive opt out applies and shall be signed by a person with the authority described in paragraph (c) of this section. The library or archives must also provide a point of contact for future correspondence, including phone number, mailing address, and email address and shall notify the Copyright Claims Board if this information changes.

(3) The Copyright Claims Board will accept the facts stated in the submission described in paragraphs (a)(1) and (2) of this section, unless they are implausible or conflict with sources of information that are known to the Copyright Claims Board or the general public.

(4) If a federal court determines that an entity described in paragraph (a)(1) of this section does not qualify for the limitations on exclusive rights under section 108 of title 17, that entity must inform the Copyright Claims Board of that determination and submit a copy of the relevant order or opinion, if any, within fourteen days after the determination is issued.

(5) A library or archives may rescind its preemptive opt-out election under this section, such that it may participate in Copyright Claims Board proceedings, by providing written notification to the Copyright Claims Board in accordance with such instructions as are provided on the Copyright Claims Board website. A library or archives may submit no more than one such rescission notification per calendar year.

(6) The notification described in paragraph (a)(1) of this section shall be submitted to the Copyright Claims Board in accordance with such instructions as are provided on the Copyright Claims Board website.

(b) *Review of eligibility.* (1) The Copyright Claims Board will maintain on its website a public list of libraries and archives that have preemptively opted out of Copyright Claims Board proceedings pursuant to paragraph (a) of this section. If the Register determines pursuant to paragraph (a)(3) of this section that an entity does not qualify for the preemptive opt-out provision, the Office will communicate to the point of contact described in paragraph (a)(2) of this section that it does not intend to add the entity to the public list, or that it intends to remove the entity from that list, and will allow the entity to provide evidence supporting its qualification for the exemption within thirty days. If the entity fails to respond, or if, after reviewing the entity's response, the Register determines that the entity does not qualify for the limitations on exclusive rights under section 108 of title 17, the

entity will be not be added to, or will be removed from, the public list. If the Register determines that the entity qualifies for the limitations on exclusive rights under section 108 of title 17, the entity will be added to, or remain on, the libraries and archives preemptive opt-out list. This provision does not limit the Office's ability to request additional information from the point of contact listed pursuant to paragraph (a)(2) of this section.

(2) A party seeking to assert a claim under this section against a library or archives that it believes is improperly included on the public list described in paragraph (b)(1) of this section may file the claim with the Copyright Claims Board pursuant to 17 U.S.C. 1506(e) and applicable regulations. The claimant must include in its statement of material facts allegations sufficient to support that belief. If the Copyright Claims Board determines, as part of its review of the claim pursuant to 17 U.S.C. 1506(f), that the claimant has alleged facts sufficient to support the conclusion that the library or archives is ineligible for the preemptive opt-out, and the claim is otherwise complaint, the claimant will be instructed to proceed with service of the claim. The respondent may include in its response any factual statements in support of its eligibility.

(3) Any determination made under paragraph (b)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(c) *Authority.* Any person with the authority to take legally binding actions on behalf of a library or archives in connection with litigation may submit a notification under paragraph (a) of this section.

(d) *Multiple libraries and archives in a single submission.* A notification under paragraph (a) of this section may include multiple libraries or archives in the same submission if each library or archives is listed separately in the submission and the submitter has the authority described under paragraph (c) of this section to submit the notification on behalf of all libraries and archives included in the submission.

#### **§ 223.3 Class action opt-out procedures.**

(a) *Opt-out or dismissal procedures.* Any party to an active proceeding before the Copyright Claims Board who receives notice of a pending or putative class action, arising out of the same transaction or occurrence as the proceeding before the Copyright Claims Board, in which the party is a class member, shall either opt out of the class action or seek written dismissal of the proceeding before Copyright Claims

Board within fourteen days of receiving notice of the pending class action. If a party seeks written dismissal of the proceeding before Copyright Claims Board, upon notice to all claimants and counterclaimants, the Copyright Claims Board shall dismiss the proceeding without prejudice.

(b) *Filing requirement.* A copy of the notice indicating a party's intent to opt out of a class action proceeding must be filed with the Copyright Claims Board within fourteen days after the filing of the notice with the court.

(c) *Timing.* The time periods provided in paragraphs (a) and (b) of this section may be extended by the Copyright Claims Board for good cause shown.

Dated: August 24, 2021.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

[FR Doc. 2021-18567 Filed 9-1-21; 8:45 am]

**BILLING CODE 1410-30-P**

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2020-0648; FRL-8787-01-R10]**

#### **Air Plan Approval; AK; Eagle River Second 10-Year PM<sub>10</sub> Limited Maintenance Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Eagle River, Alaska (AK) limited maintenance plan (LMP) submitted on November 10, 2020, by the Alaska Department of Environmental Conservation (ADEC or "the State"). This plan addresses the second 10-year maintenance period after redesignation for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). An LMP is used to meet Clean Air Act (CAA) requirements for formerly designated nonattainment areas that meet certain qualification criteria. The EPA is proposing to determine that Alaska's submittal meets the CAA requirements. The plan relies upon control measures contained in the first 10-year maintenance plan and the determination that the Eagle River area currently monitors PM<sub>10</sub> levels well below the PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS or "the standard").

**DATES:** Comments must be received on or before October 4, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0648, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Christi Duboiski, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (360) 753–9081, or [duboiski.christi@epa.gov](mailto:duboiski.christi@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever “we”, “us” or “our” is used, it means the EPA.

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**I. Background**

On August 7, 1987, the EPA designated the Community of Eagle River (Eagle River) as a PM<sub>10</sub> nonattainment area (NAA) due to measured violations of the 24-hour PM<sub>10</sub> NAAQS (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 Eagle River was designated nonattainment for PM<sub>10</sub>, ADEC and the Municipality of Anchorage (MOA) worked with Eagle River to develop a plan to bring the area into attainment no later than December 31, 1994. The State submitted the plan to the EPA on October 15, 1991, as a moderate PM<sub>10</sub> State Implementation Plan (SIP) under section 189(a) of the CAA. The primary control measure that the plan relied on was a comprehensive road paving program throughout the Eagle River NAA. The EPA took final action to approve the State’s moderate PM<sub>10</sub> SIP on August 13, 1993 (58 FR 43084).

On September 29, 2010, the State requested that the EPA redesignate the Eagle River NAA to attainment for PM<sub>10</sub> and submitted the Eagle River first 10-year PM<sub>10</sub> LMP to the EPA for approval. On October 19, 2010, the EPA determined that the Eagle River NAA had attained the PM<sub>10</sub> NAAQS by the applicable attainment date of December 31, 1994 (75 FR 64162). On January 7, 2013, the EPA took direct final action to approve the first 10-year LMP submitted by the State for the Eagle River NAA and concurrently redesignated the area to attainment for the PM<sub>10</sub> NAAQS (78 FR 900).

**II. Limited Maintenance Plan Option for PM<sub>10</sub> Areas**

*A. Requirements for the Limited Maintenance Plan Option*

Section 175A of the CAA sets forth the elements of a maintenance plan. Under section 175A, a state must submit a plan to demonstrate continued attainment of the applicable NAAQS for at least 10 years after an area is redesignated to attainment. Eight years into the first maintenance period, the state must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period. On September 4, 1992, the EPA issued guidance on the content of a maintenance plan (Memorandum from John Calcagni, Director, Air Quality Management Division, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment,” (Calcagni Memo)).<sup>1</sup> The Calcagni Memo

<sup>1</sup> The Memorandum from the EPA’s Air Quality Management Division Director to EPA Regional Air Directors entitled “Procedures for Processing Requests to Redesignate Areas to Attainment,” dated September 4, 1992 (Calcagni Memo) can be found at <https://www3.epa.gov/ttn/naaqs/>

states that a maintenance plan should include the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM<sub>10</sub> nonattainment areas (see Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled “Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas” (LMP Option Memo)).<sup>2</sup> The LMP Option memo contains a statistical demonstration states can use to show that areas are meeting certain air quality criteria with a high degree of probability, and therefore will maintain the standard 10 years into the future. By providing this statistical demonstration, the EPA can consider the maintenance demonstration requirement of the CAA to be satisfied for the moderate PM<sub>10</sub> nonattainment area meeting this air quality criteria. If the tests described in section IV of the LMP Option memo are met, the EPA will treat that as a demonstration that the area will maintain the NAAQS. Consequently, 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, a State must demonstrate that the area meets the following criteria. First, the area should have attained the PM<sub>10</sub> NAAQS. Second, the most recent five years of air quality data at all monitors in the area, called the 24-hour average design value, should be at or below 98 micrograms per cubic meter (µg/m<sup>3</sup>). Third, the State should expect only limited growth in on-road motor vehicle PM<sub>10</sub> emissions and should have passed a motor vehicle regional emissions analysis test. Lastly, the LMP Option Memo identifies core provisions that must be included in all limited maintenance plans. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-

[aqmguidance/collection/cp2/19920904\\_calcagni\\_process\\_redesignation\\_guidance.pdf](https://www.epa.gov/airquality/aqmguidance/collection/cp2/19920904_calcagni_process_redesignation_guidance.pdf).

<sup>2</sup> The “Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas” Memo outlines the criteria for development of a PM<sub>10</sub> limited maintenance plan and can be found at <https://www.epa.gov/sites/production/files/2016-06/documents/2001lmp-pm10.pdf>.

approved air quality monitoring network, and contingency provisions.

*B. Conformity Under the Limited Maintenance Plan Option*

The transportation conformity rule and the general conformity rule (set forth in the Code of Federal Regulations (CFR) at 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 conforming to 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 PM<sub>10</sub> 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) for the same reasons that the budgets are essentially considered to be unlimited.

While areas with maintenance plans approved under the LMP option are not subject to the budget test (see 40 CFR 93.109(e)), 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 four 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.

If the EPA approves the second 10-year LMP, the Eagle River maintenance area will continue to be exempt from performing a regional emissions analysis but must meet project-level conformity analyses as well as the transportation conformity criteria described above.

**III. Review of the State’s Submittal**

*A. Qualifying for the Limited Maintenance Plan Option*

As discussed in Section II.A. of this preamble, the LMP Option Memo outlines the requirements for an area to qualify for an LMP. First, the area should be attaining the PM<sub>10</sub> NAAQS. The PM<sub>10</sub> NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m<sup>3</sup> is equal to or less than one (40 CFR 50.6). The Eagle River area continues to attain the standard for PM<sub>10</sub> despite exceedances of the standard for the 24-hour average concentration in 2010, 2013 and 2019. We have evaluated the most recent ambient air quality data for the 24-hour PM<sub>10</sub> NAAQS and determined that the Eagle River area continues to attain the standard with the number of annual exceedances equal to 0.4 for the period 2018 through 2020. Table 1 of this preamble shows the 24-hour maximum PM<sub>10</sub> concentrations measured at the Parkgate monitoring site from 2010–2020, which are consistently below the NAAQS.

TABLE 1—PARKGATE 24-HOUR MAXIMUM PM<sub>10</sub> CONCENTRATIONS 2010–2020

Year	24-hour max µg/m <sup>3</sup>	2nd highest 24-hour µg/m <sup>3</sup>	Number of days exceeding NAAQS
2010	207	92	1
2011	108	70	0
2012	81	77	0
2013	174	78	1
2014	111	109	0
2015	90	70	0
2016	110	105	0
2017	63	59	0
2018	62	61	0
2019	168	79	1
2020	56	45	0

Second, the 24-hour average design value for the most recent five years of monitoring data must be at or below the critical design value of 98 µg/m<sup>3</sup> for the PM<sub>10</sub> NAAQS. The critical design value is a margin of safety in which an area has a one in ten probability of exceeding the NAAQS. The 5-year average design value for Eagle River, based on PM<sub>10</sub>

monitoring data from 2014 through 2018, is 96 µg/m<sup>3</sup>. In addition, the EPA also calculated the 5-year average design value for Eagle River based on PM<sub>10</sub> monitoring data from 2016 through 2020 and found the most conservative design value estimate to be 93.4 µg/m<sup>3</sup>, which is below the critical design value of 98 µg/m<sup>3</sup>. The EPA’s attainment and

average design value evaluation used to determine if the area qualifies for the LMP option is included in the docket for this action. The EPA reviewed the data and methodology provided by the State and the most recent 5-year average design value and finds that the Eagle River area’s 5-year average design value is below the critical design value of 98

µg/m<sup>3</sup> outlined in the LMP Option Memo. Therefore, the EPA finds that the Eagle River area meets the design value criteria outlined in the LMP options memo.

Third, the area must meet the motor vehicle regional emissions analysis test described in the LMP Option Memo. The State submitted an analysis showing that growth in on-road mobile PM<sub>10</sub> emissions sources was minimal and would not threaten the assumption of maintenance that underlies the LMP policy. Using the EPA’s methodology, the State calculated total projected growth in on-road motor vehicle PM<sub>10</sub> emissions through 2033 (the end of the 20-year maintenance period) for the Eagle River area. This calculation is derived using Attachment B of the EPA’s LMP Option Memo, where the projected percentage increase in vehicle miles traveled over the next ten years (VMT<sub>pi</sub>) is multiplied by the on-road mobile portion of the attainment year inventory (DV<sub>mv</sub>), including re-entrained road dust. This test is met when (VMT<sub>pi</sub> × DV<sub>mv</sub>) plus the design value for the most recent five years of quality assured data is below the margin of safety (MOS) for the relevant PM<sub>10</sub> standard in µg/m<sup>3</sup> for a given area. This MOS value can be 98 µg/m<sup>3</sup> or a site-specific value computed from data collected at the site of interest using methods outlined in Attachment A of the LMP Option Memo. The computed site-specific MOS selected for the Parkgate monitoring site in Eagle River is 125.7 µg/m<sup>3</sup> (the critical design value for all the empirical data). See the Eagle River LMP, Section III.D.2.5 and associated appendix, placed in the docket for this action, for details of this computation. The motor vehicle regional emissions analysis test results of 109.6 µg/m<sup>3</sup>, when adjusted for growth, are below the calculated site-specific critical design value, or MOS, of 125.7 µg/m<sup>3</sup>. The EPA has reviewed the calculations in the State’s Eagle River

LMP submittal and proposes to find that the area meets the motor vehicle regional emissions analysis test.

As described above, the Eagle River PM<sub>10</sub> maintenance area meets the qualification criteria set forth in the LMP Option Memo and accordingly qualifies for the LMP option. To ensure these requirements continue to be met, the State commits to evaluate monitoring data annually to ensure the area continues to qualify for the LMP option. However, if after performing the annual recalculation of the area’s average design value in a given year, the State determines that the area no longer qualifies for the LMP, the State will take action to attempt to reduce PM<sub>10</sub> concentrations enough for the area to requalify for the LMP. One possible approach the State may take is to implement a contingency measure found in its SIP. See Section III.D.2.10 of the State’s submittal, placed in the docket for this action, for a description of the contingency measures. If the attempt to reduce PM<sub>10</sub> concentrations fails, or if it succeeds but in future years it becomes necessary again to address increasing PM<sub>10</sub> concentrations in the area, the area will no longer qualify for the LMP option.

*B. Attainment Inventory*

Pursuant to the LMP Option Memo, the State’s submission should include an emissions inventory, which can be used to demonstrate attainment of the relevant 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 Eagle River PM<sub>10</sub> LMP includes an emissions inventory, with a base year of 2017. In the past, the

highest PM<sub>10</sub> concentrations have typically occurred during spring break-up and fall freeze-up. For this reason, the emissions inventories reflect conditions and activity levels (e.g., amount of silt loading on roads and residential wood heating rates) that commonly occur during these two times of the year. The same assumptions and methods used to develop the first 10-year LMP were used to develop the 2017 base year PM<sub>10</sub> emissions inventory for the second 10-year LMP and are described in detail in the Appendix to III.D.2.6 of the Eagle River LMP submittal in the docket for this action. The 2017 base year represents the most recent emissions inventory data available, is representative of the level of emissions during a period of time used to calculate the area is attaining the NAAQS, and is consistent with the data used to determine applicability of the LMP option (i.e., having no violations of the NAAQS during the five-year period used to calculate the design value).

Unlike the first 10-year LMP, where five sources of PM<sub>10</sub> emissions were identified and inventoried, the second 10-year LMP inventoried six sources as shown in Table 2 of this preamble. The first 10-year LMP assumed emissions from non-road equipment were zero, however, the second 10-year LMP calculated these emissions to be less than 1% of the 2017 emissions inventory. The most significant of the PM<sub>10</sub> emission sources for the Eagle River area are still paved road dust, windblown dust, and residential wood combustion. Like the emission inventory prepared for the first 10-year LMP, unpaved roads emissions are not included in the inventory for the second 10-year LMP. This is because since 2007, all the unpaved roads in Eagle River have been paved with either hot asphalt paving or surfaced with recycled asphalt product.

TABLE 2—2017 EMISSIONS INVENTORY IN TONS/DAY AND % OF TOTAL EMISSIONS

Source category	Spring break-up (March, April) (tons/day) (percent)	Fall freeze-up (October, November) (tons/day) (percent)
Paved Roads .....	3.71 (56.3)	1.06 (48.6)
Wind-blown Dust from Paved Roads, Parking Lots and Un-Vegetated Areas .....	2.48 (37.6)	0.73 (33.4)
Fireplaces and Wood Stoves .....	0.35 (5.31)	0.35 (16.0)
Natural Gas Combustion .....	0.009 (0.13)	0.009 (0.41)
Exhaust, Tire and Brake Wear Emissions from Motor Vehicles .....	0.026 (0.39)	0.027 (1.23)
Non-Road Equipment Emissions .....	0.0135 (0.20)	0.0132 (0.60)
<b>Total .....</b>	<b>6.58 (100)</b>	<b>2.18 (100)</b>

In accordance with the LMP Option Memo, all controls relied on to demonstrate attainment and continued maintenance will remain in place (e.g., the required paved road improvements for non-rural, residential properties in the Municipality of Anchorage).<sup>3</sup> Efforts by the Municipality of Anchorage (MOA) to pave all streets except those in low density residential areas was the primary PM<sub>10</sub> mitigation program in Eagle River that lead to significant reduction in PM<sub>10</sub> emissions. By 2007 all 22 miles of local gravel roads were paved with either traditional hot asphalt paving or surfaced with recycled asphalt product (RAP). The MOA is committed to continued maintenance of these roads, and the MOA and the Alaska Department of Transportation and Public Facilities are committed to maintaining sand specifications that allow no more than 2% fines or silt allowed in winter traction sand. ADEC asserts that no additional control measures are necessary to maintain the NAAQS.

The submittal meets the EPA guidance for purposes of an attainment emissions inventory, and the emissions inventory data supports the State's conclusions that the existing control measures will continue to protect and maintain the PM<sub>10</sub> NAAQS.

#### C. Air Quality Monitoring Network

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. From 1985 until present, Alaska has operated a PM<sub>10</sub> monitor at the Parkgate Business Center (Parkgate monitor) in the Eagle River NAA. The Parkgate monitor was sited and maintained in accordance with Federal siting and design criteria in 40 CFR part 58, and in consultation with the EPA Region 10. On June 26, 2020, ADEC submitted the 2020 Annual Monitoring Network Plan that the EPA approved on January 25, 2021. ADEC's network plan and the EPA's approval letter are included in the docket for this action.

The State commits to continued operation of at least one EPA-approved PM<sub>10</sub> monitoring site in the Eagle River maintenance area through the end of the maintenance planning period, 2033, and will continue to operate the monitor

<sup>3</sup> The control measures are fully implemented and continue to apply after the SIP commitment was fulfilled. The Anchorage Municipal Code (AMC) Title 21 was reorganized and recodified, State effective January 1, 2014. The AMC Title 21 section that requires paved road improvements for non-rural, residential properties in the MOA can be found in Section 21.08.050.

consistent with the EPA-approved ADEC annual network plan in order to meet the EPA requirements at 40 CFR part 58.

#### D. Verification of Continued Attainment

The level of the PM<sub>10</sub> NAAQS is 150 µg/m<sup>3</sup>, 24-hour average concentration. The NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m<sup>3</sup> is equal to or less than one (40 CFR 50.6). As stated in Section III.D. of this preamble, ADEC commits to continue to operate a regulatory monitoring network in accordance with 40 CFR part 58. In addition, ADEC commits to verifying continued attainment of the PM<sub>10</sub> standard through the maintenance plan period with the operation of an appropriate PM<sub>10</sub> monitoring network. In developing the second 10-year maintenance plan, ADEC evaluated the most recent three years of complete, quality-assured data for the Eagle River NAA (2017 through 2019) to verify continued attainment of the standard.

#### E. Contingency Provisions

The 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 the Calcagni Memo, these contingency provisions are an enforceable part of the federally approved SIP. The maintenance plan should clearly identify the events that would "trigger" the adoption and implementation of a contingency provision, the contingency provision(s) that would be adopted and implemented, and the schedule indicating the time frame by which the State would adopt and implement the provision(s). The LMP Option Memo and the Calcagni Memo state that the EPA will determine the adequacy of a contingency plan on a case-by-case basis. At a minimum, it must require that the state implement all measures contained in the CAA part D nonattainment plan for the area prior to redesignation.

In the Eagle River PM<sub>10</sub> LMP, ADEC included maintenance plan contingency provisions to ensure the area continues to meet the PM<sub>10</sub> NAAQS. The Eagle River LMP describes a process and a timeline to identify, evaluate and select the appropriate contingency measure(s) from a list of measures in the event of a quality assured violation of the PM<sub>10</sub> NAAQS. The contingency measures that may be implemented to reduce

emissions are listed in Section III.D.2.10 of the Eagle River LMP in the docket for this action. Within 30 days following a violation of the PM<sub>10</sub> NAAQS, the MOA will convene an assessment team to evaluate the events contributing to the violation and identify control measure(s) that appropriately address the source(s) and circumstances causing the violation. Within 120 days of the violation, the assessment team will prepare a report that identifies the cause or causes of the violation and recommend appropriate measures for mitigating future violations. The report will be presented to the Anchorage Metropolitan Area Transportation Solutions Policy Committee for review and adoption and will then be forwarded to ADEC for approval.

The EPA proposes to determine that the contingency provisions submitted in the Eagle River PM<sub>10</sub> LMP are adequate to meet CAA section 175A requirements and the contingency provisions as outlined in the LMP Option Memo.

#### IV. Proposed Action

The EPA is proposing to approve the second 10-year PM<sub>10</sub> limited maintenance plan for Eagle River submitted by the State of Alaska.<sup>4</sup> The EPA's review of the air quality data for the Eagle River area indicates that the area continues to show attainment of the PM<sub>10</sub> NAAQS and meets all the LMP requirements as described in this action. If finalized, the EPA's approval of this LMP will satisfy the section 175A CAA requirements for the second 10-year period for the Eagle River PM<sub>10</sub> area.

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). 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 proposed 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 proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

<sup>4</sup> We intend to address the remainder of the November 10, 2020 State of Alaska SIP submission (the Juneau, Mendenhall Valley Second 10-year PM<sub>10</sub> LMP, the 2019 Emission Limit Control Measures, and the 2019 Adoption by Reference Updates and Standard Permit Conditions) in separate EPA actions.

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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 requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Dated: August 25, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2021–18844 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[EPA–R07–UST–2021–0345; FRL–8775–01–R7]

#### Kansas: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Kansas's Underground Storage Tank (UST) program submitted by the Kansas Department of Health and Environment (KDHE). This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of Kansas's State program and incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

**DATES:** Comments on this proposed rule must be received on or before October 4, 2021.

**ADDRESSES:** Submit comments, identified by EPA–R07–UST–2021–0345, by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* [mance.cassandra@epa.gov](mailto:mance.cassandra@epa.gov).  
*Instructions:* Direct your comments to Docket ID No. EPA–R07–UST–2021–0345. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal <https://www.regulations.gov> website is an “anonymous access”

system, which means the 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 the EPA without going through <https://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 also 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. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance. You can view and copy the documents that form the basis for this codification and associated publicly available materials either through [www.regulations.gov](https://www.regulations.gov) or by contacting Cassandra Mance at (913) 551–7355 or [mance.cassandra@epa.gov](mailto:mance.cassandra@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 7 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Mance, Tanks, Toxics, and Pesticides Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; (913) 551–7355; [mance.cassandra@epa.gov](mailto:mance.cassandra@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the “Rules and Regulations” section of this **Federal Register**.

**Authority:** This proposed rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: August 24, 2021.

**Edward H. Chu,**  
*Acting Regional Administrator, EPA Region 7.*

[FR Doc. 2021–18913 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**