

Dated: June 30, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010-17342 Filed 7-15-10; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[Docket EPA-R10-OAR-2010-0432; FRL-9171-4]

### Finding of Attainment for PM<sub>10</sub> for the Mendenhall Valley PM<sub>10</sub> Nonattainment Area, AK

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA finds that the Mendenhall Valley nonattainment area in Alaska attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM<sub>10</sub>) as of December 31, 1995.

**DATES:** This rule is effective on September 14, 2010, without further notice, unless EPA receives adverse comment by August 16, 2010. If EPA receives adverse comment, we will publish a timely withdrawal 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-2010-0432, by any of the following methods:

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

- *E-mail*: [body.steve@epa.gov](mailto:body.steve@epa.gov).

- *Mail*: Steve Body, 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*: Steve Body, 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-2010-0432. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail 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 <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Steve Body at *telephone number*: (206) 553-0782, *e-mail address*: [body.steve@epa.gov](mailto:body.steve@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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#### I. Background

##### A. PM<sub>10</sub> NAAQS

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM<sub>10</sub>, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM<sub>10</sub>: a 24-hour standard of 150 micrograms per cubic meter (µg/m<sup>3</sup>) and an annual PM<sub>10</sub> standard of 50 µg/m<sup>3</sup>. EPA also promulgated secondary PM<sub>10</sub> standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM<sub>10</sub> standard but retained the 24-hour PM<sub>10</sub> standard. 71 FR 61144 (October 17, 2006). The 24-hour PM<sub>10</sub> standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.<sup>1</sup> 40 CFR 50.6 and 40 CFR part 50, appendix K.

##### B. Designation and Classification of PM<sub>10</sub> Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or the Act) were designated nonattainment for PM<sub>10</sub> by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. *See generally* 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM<sub>10</sub> planning areas identified on August 7, 1987 (52 FR 29383), as further clarified on October 31, 1990 (55 FR 45799), and any other areas violating the NAAQS for PM<sub>10</sub> prior to January 1, 1989. A **Federal Register** notice announcing the areas

<sup>1</sup> An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 µg/m<sup>3</sup>) after rounding to the nearest 10 µg/m<sup>3</sup> (*i.e.* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 µg/m<sup>3</sup> would not be an exceedance since it would be rounded to 150 µg/m<sup>3</sup> whereas a recorded value of 155 µg/m<sup>3</sup> would be an exceedance since it would be rounded to 160 µg/m<sup>3</sup>. *See* 40 CFR part 50, appendix K, section 1.0.

designated nonattainment for PM<sub>10</sub> upon enactment of the 1990 Amendments, known as "initial" PM<sub>10</sub> nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Mendenhall Valley PM<sub>10</sub> nonattainment area was one of these initial moderate PM<sub>10</sub> nonattainment areas.

All initial moderate PM<sub>10</sub> nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM<sub>10</sub> nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM<sub>10</sub> NAAQS by the December 31, 1994 attainment date was practicable. See section 189(a).

#### C. How does EPA make attainment determinations?

All PM<sub>10</sub> nonattainment areas are initially classified "moderate" by operation of law when they are designated nonattainment. See section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM<sub>10</sub> nonattainment areas attained the PM<sub>10</sub> NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM<sub>10</sub> NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) and recently renamed National Core (NCore) monitoring stations in the nonattainment areas and entered into the EPA's national data base, now called Air Quality System (AQS). Data entered into the AQS has been determined to meet Federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A) and may be used to determine the attainment status of areas.

We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM<sub>10</sub> concentrations greater than 150 ug/m<sup>3</sup>. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m<sup>3</sup> (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the 24-hour standards for PM<sub>10</sub>. See 40 CFR part 50 and appendix K.

#### D. What is the attainment date for the Mendenhall Valley PM<sub>10</sub> nonattainment area?

The original attainment date for the Mendenhall Valley PM<sub>10</sub> nonattainment area was December 31, 1994. On September 12, 1994, (60 FR 47276) the attainment date was later extended to December 31, 1995, under the authority of section 188(d) of the Act.

#### E. What PM<sub>10</sub> Planning has occurred for the Mendenhall Valley PM<sub>10</sub> nonattainment area?

After the Mendenhall Valley PM<sub>10</sub> nonattainment area was designated nonattainment for PM<sub>10</sub>, the Alaska Department of Environmental Conservation (ADEC), began in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products ADEC developed and implemented control measures on PM<sub>10</sub> sources in the Mendenhall Valley PM<sub>10</sub> nonattainment area. The State submitted these control measures to EPA on June 22, 1993, as a moderate PM<sub>10</sub> nonattainment SIP revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program and controls on fugitive road dust. EPA took final action to approve the State's moderate PM<sub>10</sub> SIP on March 24, 1994, (59 FR 13885).

## II. EPA's Analysis

#### A. What does the air quality data show as of the December 31, 1995 attainment date?

Whether an area has attained the PM<sub>10</sub> NAAQS is based exclusively upon measured air quality levels over the three calendar years See 40 CFR part 50

appendix K. For an area with a December 31, 1995, attainment date, data reported for calendar years 1993, 1994 and 1995 is considered. EPA also considered air quality data reported for the period subsequent to the attainment date to the present to demonstrate the area continued to attain the PM<sub>10</sub> NAAQS.

The State of Alaska operated two PM<sub>10</sub> SLAMS monitoring sites in the Mendenhall Valley PM<sub>10</sub> nonattainment area during 1992 through 1995: Floyd Dryden High School and Trio Street. Both sites meet Federal siting requirements and are appropriate for monitoring the area's compliance with the PM<sub>10</sub> NAAQS. (See EPA's letters approving Alaska's annual network review.) The Trio Street site ceased operation in 1997. The Floyd Dryden Middle School site continued operation through 2009.

#### Floyd Dryden Middle School Site

The Floyd Dryden site recorded two values above the level of the 24 hour PM<sub>10</sub> NAAQS (exceedances) in February 1992. These values were flagged by ADEC as exceptional events due to high winds, but AQS does not show that R10 concurred on these flags. Thus, these two daily values are included in the expected exceedance calculations. Outside of these two exceedances there have been no other exceedances of the daily PM<sub>10</sub> standard at the Floyd Dryden Middle School site from February 1992 through December 31, 2009.

There were a number of years for which the number of reported daily values did not meet the 75% data completeness criteria required for making attainment determinations: 1998, 2000, 2003, 2008, and 2009. Therefore an affirmative attainment determination can only be made for a subset of these years; 1992-94, 1993-95, 1994-96, 1995-97, 2004-06, and 2005-07. The 1993-1995 expected exceedance rate is 0.0 which likewise demonstrates attainment with the NAAQS by the attainment date.

#### Trio Street Site

The Trio Street site recorded five PM<sub>10</sub> exceedances in 1992 and three in 1993. Of these eight total exceedances, only the four recorded in the first quarter 1992 were flagged by ADEC as high wind exceptional events. The AQS does not show that Region 10 concurred on these high wind events and therefore the data cannot be excluded from expected exceedance calculations. There were no exceedances from 1994 through 1997 when the site ceased operation. For the time period of

January 1, 1992 to June 30, 1997, the Trio Street site met the 75% quarterly data completeness requirement. Thus, there is sufficient data to make an attainment determination. The expected exceedance calculation for years 1993–95 was 1.0, which demonstrates attainment. An expected exceedance rate of greater than 1.0 would be a violation of the NAAQS.

*B. Does more recent air quality data also show attainment?*

Although the attainment date for the Mendenhall Valley PM<sub>10</sub> nonattainment area is December 31, 1995, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1993, 1994, and 1995, EPA has also reviewed the air quality data collected at the State monitoring sites from January 1996 through December 2009. As discussed above, there have been no exceedances recorded at the Floyd Dryden site since 1992 and no exceedances recorded at the Trio Street site from 1994 through 1997, when it ceased operation. Thus, the area continues to be in compliance with the 24 hour PM<sub>10</sub> NAAQS during this period.

### III. 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 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 September 14, 2010. 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. Parties with objections to this

direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 81

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

Dated: June 22, 2010.

**Dennis J. McLerran**,

*Regional Administrator, EPA, Region 10.*

[FR Doc. 2010–17417 Filed 7–15–10; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 99–87, RM–9332; FCC 10–119]

#### Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission issued an Order ("*Order*") waiving certain of its rules pertaining to the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio licenses in the 150–174 MHz and 421–512 MHz bands. The Commission denied relief with respect to the interim licensing deadlines, but granted relief in part with respect to certain interim equipment deadlines.

**DATES:** Effective January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Melvin Spann, *Melvin.Spann@FCC.gov*, Wireless Telecommunications Bureau, (202) 418–1333, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in WT Docket No. 99–87 and RM–9332, FCC 10–119, adopted on June 29, 2010 and released June 30, 2010. The Commission waives certain of its rules pertaining to the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio licenses in the 150–174 MHz and 421–512 MHz bands. The full text of