NR 428.25(1)(b) to (d), NR 428.25(2), NR 428.25(3)(a), and NR 428.25(3)(c) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(2) NR 428.25(1)(a)1.a. and c. and (3)(b) as published in the Wisconsin Administrative Register on August 30, 2009, No. 644, effective September 1, 2009.

(N) NR 428.26 Utility reliability waiver. NR 428.26 as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

(ii) Additional material.

(A) NR 484.04 Code of federal regulations appendices. NR 428.04(13), (15m), (16m), (21m), (26m)(bm), (26m)(d) and (27) as published in the Wisconsin Administrative Register, on July 30, 2007, No. 619, effective August 1, 2007.

[FR Doc. 2010–26256 Filed 10–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket EPA–R10–OAR–2010–0433; FRL–9214–7]

Determination of Attainment for PM_{10}: Eagle River PM_{10} Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Eagle River 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_{10}) as of December 31, 1994.

DATES: This rule is effective on December 20, 2010, without further notice, unless EPA receives adverse comment by November 18, 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–2010–0433, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: vaupel.claudia@epa.gov.*
- *Mail:* Claudia Vergnani Vaupel, 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: Claudia Vergnani Vaupel, 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–2010–0433. 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, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at telephone number: (206) 553–6121, e-mail address: *vaupel.claudia@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:

Table of Comments

I. Background
- A. PM^{10} Standard
- B. The Eagle River PM_{10} Nonattainment Area
- C. Attainment Date for the Eagle River PM^{10} Nonattainment Area
- D. PM^{10} Planning in the Eagle River PM_{10} Nonattainment Area

II. Attainment Determination
- A. What are the requirements for attainment determinations?
- B. What do the air quality data show as of the December 31, 1994 attainment date?
- C. What do more recent air quality data show?

III. EPA's Final Action

IV. Statutory and Executive Order Reviews

I. Background

A. PM_{10} Standard

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10}, 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_{10}: A 24-hour standard of 150 micrograms per cubic meter ($\mu g/m^3$) and an annual PM_{10} standard of 50 $\mu g/m^3$. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144 (October 17, 2006). The 24-hour PM_{10} standard is attained when the expected number of days per calendar year with a 24-hour concentration above 154 $\mu g/m^3$, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] 40 CFR 50.6 and 40 CFR part 50, appendix K.

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

B. The Eagle River PM_{10} Nonattainment Area

On August 7, 1987 (52 FR 29383), EPA identified a number of areas across the country as PM_{10} "Group I" areas of concern, that is, areas with a 95% or greater likelihood of violating the PM_{10} NAAQS and requiring substantial planning efforts. The Eagle River PM_{10} nonattainment area was identified as a Group I area of concern.

Areas meeting the requirements of section 107(d)(4)(B) were designated nonattainment for PM_{10} 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_{10} 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 PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Clean Air Act Amendments, known as "initial" PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101). The Eagle River PM_{10} nonattainment area was one of these initial moderate PM_{10} nonattainment areas.

C. Attainment Date for the Eagle River PM_{10} Nonattainment Area

All initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994. States containing initial moderate PM_{10} 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_{10} NAAQS by the December 31, 1994, attainment date was practicable. See section 189(a).

D. PM_{10} Planning in the Eagle River PM_{10} Nonattainment Area

After the Eagle River PM_{10} nonattainment area was designated nonattainment for PM_{10}, 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_{10} sources in the Eagle River PM_{10} nonattainment area. The State submitted these control measures to EPA on October 15, 1991, as a moderate PM_{10} nonattainment SIP revision under section 189(a) of the Act. The control strategy focused on implementing road surfacing and paving projects to reduce fugitive dust from paved and unpaved streets and windblown dust. EPA took final action to approve the State's moderate PM_{10} SIP on August 13, 1993. See 58 FR 43084.

II. Attainment Determination

A. What are the requirements for attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality System (AQS). Data from air monitors operated by state/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA 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, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. 40 CFR 58.14 (2006) and 58.20 (2007);[2] 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour standard is attained when the expected number of days per calendar year with a 24-hour concentration above 154 $\mu g/m^3$, as determined in accordance with 40 CFR part 50, appendix K, is less than or equal to one. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM_{10} standard. See 40 CFR part 50 and appendix K.

B. What do the air quality data show as of the December 31, 1994 attainment date?

Because the Eagle River PM_{10} nonattainment area has a December 31, 1994, attainment date, our determination of whether or not the area attained the standard is based on 1992, 1993 and 1994 complete quality-assured data for the area. During that period, the State of Alaska operated two PM_{10} SLAMS monitoring sites within the Eagle River nonattainment area: the Parkgate site and the Baronoff site. Both monitoring sites met EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E. The Parkgate site began operation in 1985 and continues to operate. The Baronoff site began operating in May of 1992 and ceased operation in 1996.

Parkgate Site

Our review of complete quality-assured air quality data from the Parkgate site for the period from January 1, 1992 through December 31, 1994, shows that one 24-hour PM_{10} value, reported on September 16, 1992, exceeded the level of the 24-hour standard.[3] This 24-hour value was flagged by ADEC in AQS as a special event due to a volcanic eruption. Under EPA's 1994 guidance,[4] data may be excluded from regulatory determinations related to exceedances or violations of the NAAQS if it is adequately demonstrated that a special event caused the exceedance or violation. EPA concurred on this exceedance as a special event in a letter to ADEC on May 24, 1995. Consequently, this value is excluded from expected exceedance calculations. Because there was no other recorded exceedance of the 24-hour PM_{10} standard during calendar years 1992–1994, the expected PM_{10} exceedance rate for the 1992–1994 period at the Parkgate site is 0.0. Therefore, the Parkgate site has demonstrated attainment for the 24-hour PM_{10}

[2] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. *See* 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

[3] To meet data completeness criteria, missing data in the first quarter of 1994 was substituted according to EPA guidance. See "PM_{10} SIP Development Guideline" (EPA–450/2–86–001, June 1987), "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" (EPA–450 4–87–005, April 1987), and the data completeness discussion in the Memorandum from Chris Hall entitled "Eagle River PM_{10} Attainment Determination," (October 5, 2010).

[4] "Guideline on the Identification and Handling of Ambient Air Quality Data Affected by Special Events or Special Conditions" (EPA–454/D–94–001, September, 1994).

NAAQS as of the attainment date of December 31, 1994.

Additionally, we evaluated expected exceedances for the three-year period prior to and after the attainment date. Because other than the September 1992 special event, no other exceedance was recorded during calendar years 1991 through 1997, the Parkgate site has also demonstrated attainment of the 24-hour PM_{10} NAAQS for calendar years 1991–1993, 1993–1995, 1994–1996, and 1995–1997.

Baronoff Monitoring Site

EPA also reviewed the data from the Baronoff site, the other SLAMS site in the Eagle River PM_{10} nonattainment area that was operating during the 1992–1994 period. Because this monitor began operating on May 27, 1992, and did not operate for one full quarter during the 1992–1994 period, the data from this monitor cannot be used for making a determination of attainment for the 1992–1994 period.[5] Even so, we can evaluate whether the data from this monitor show that the Eagle River PM_{10} nonattainment area failed to attain for the 1992–1994 period. Although the Baronoff site recorded three exceedances of the 24-hour PM_{10} NAAQS in the 1992–1994 period (all in 1992), these values were flagged by ADEC as special events due to a volcanic eruption. EPA concurred on the flagged exceedances in a May 24, 1995, letter to ADEC and thus these values are excluded from the expected exceedance calculations. Outside of these flagged exceedances there has been no other exceedance of the 24-hour PM_{10} standard at the Baronoff site from May 27, 1992 through December 31, 1994 (nor through October 1, 1996, when the monitor ceased operation). We therefore conclude that data from the Baronoff site does not show the Eagle River PM_{10} nonattainment area failed to attain the PM_{10} standard by the December 31, 1994, attainment date.[6]

C. What does more recent air quality data show?

Although the attainment date for the Eagle River PM_{10} nonattainment area is December 31, 1994, and the air quality data used to determine attainment by that date includes all data collected in calendar years 1992, 1993, and 1994, EPA has also reviewed the air quality data collected at the State monitoring sites from January 1992 through the most recent available data in AQS. The Parkgate site recorded one exceedance of the standard in each of the years 2007 and 2009. These exceedances were timely flagged by ADEC as exceptional events due to high winds and will be evaluated by EPA under the Exceptional Events Rule and addressed in a separate action.[7] Under the Exceptional Events Rule, EPA may exclude data from regulatory determinations related to exceedances or violations of the NAAQS if it is adequately demonstrated that an exceptional event caused the exceedance or violation. 40 CFR 50.1, 50.14. If in the future EPA determines, after notice-and-comment rulemaking, that the area is no longer attaining the PM_{10} NAAQS, EPA will publish such determination in the **Federal Register.**

III. EPA's Final Action

EPA is determining that the Eagle River area has attained the PM_{10} standard based on the three years of complete, quality-assured data as of the attainment date of December 31, 1994. For the period from 1992–1994, the expected exceedance rate of 0.0 for the Parkgate site is equal to or less than the expected exceedance rate of 1.0 that is allowed under the PM_{10} NAAQS. Because complete quality-assured data for this period show an expected exceedance rate equal to or below the PM_{10} standard, EPA concludes that the area has met the standard. EPA therefore determines that the Eagle River nonattainment area has attained the 24-hour PM_{10} NAAQS as of the December 31, 1994, attainment date.

IV. 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).

[5] Because data for the 1st quarter 1992 was less than 50% complete, the substitution guidance used for the Parkgate site was not used for this site.

[6] Based on the available data, the site does not show a violation of the 24-hour PM_{10} NAAQS. See 40 CFR part 50, appendix K, section 2.3(c).

[7] Note that ADEC has recently advised EPA of an exceedance in September 2010 that they also intend to flag as a high wind exceptional event.

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 December 20, 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: October 7, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2010–26258 Filed 10–18–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Marion County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1041			
Unnamed Tributary to Reddy Creek.	At the confluence with Reedy Creek	+458	Town of Gu-Win.