



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R10-OAR-2014-0140, FRL-9918-97-Region 10]**

**Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving the Alaska State Implementation Plan (SIP) as meeting specific infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM<sub>2.5</sub>) on July 18, 1997 and October 17, 2006, and for ozone on March 12, 2008. Whenever a new or revised NAAQS is promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to implement, maintain, and enforce the standards. These elements are referred to as infrastructure requirements.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification

No. EPA-R10-OAR-2014-0140. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall at: (206) 553-6357, [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us" or "our" is used, it is intended to refer to the EPA. Information is organized as follows:

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### **I. Background**

Section 110 of the CAA specifies the general requirements for states to submit SIPs to

implement, maintain and enforce the NAAQS and the EPA's actions regarding approval of those SIPs. On July 9, 2012 and March 29, 2011, Alaska made SIP submissions to the EPA demonstrating that the Alaska SIP meets the infrastructure requirements of the CAA for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. On July 16, 2014, we proposed approval of the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (H), (J), (K), (L), and (M) (79 FR 41496). We also proposed approval of the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration and visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. In addition, we proposed approval of the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 ozone NAAQS.

An explanation of the CAA requirements and implementing regulations that are met by these SIP submissions, a detailed explanation of the submissions, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on July 16, 2014, and will not be restated here (79 FR 41496). Below we address a recent court decision related to the application of PSD permitting requirements to greenhouse gases (GHGs) and why we believe the decision does not impact this action.

With respect to CAA section 110(a)(2)(C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the state has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of CAA section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the state has a complete PSD

permitting program correctly addressing all regulated NSR pollutants. Alaska has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)).

The EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, the EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of

Columbia Circuit. At this juncture, the EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, the EPA has determined the Alaska SIP is sufficient to satisfy CAA sections 110(a)(2)(C), (D)(i)(II), and (J) with respect to GHGs because the PSD permitting program previously-approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Alaska PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for purposes of the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect the EPA's approval of Alaska's infrastructure SIP as to the requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for purposes of the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS.

## **II. Response to Comment**

The public comment period for our proposed action ended on August 15, 2014, and we

received one comment via email from Robert Ukeiley of the Law Office of Robert Ukeiley.

Comment: “EPA must disapprove all of the PSD related elements of all three of these proposed Infrastructure SIPs because Alaska does not have PM<sub>2.5</sub> increments in its SIP approved PSD program. EPA can approve these PSD related elements if the PM<sub>2.5</sub> increments are approved into the Alaska SIP prior to final action on these infrastructure SIPs. Also, the Alaska minor source permitting program does not prohibit minor sources from causing or contributing to PM<sub>2.5</sub> and ozone NAAQS violations. Therefore, all SIP elements related to the minor source permitting program must be disapproved.”

Response: With respect to the first part of the comment on Alaska’s PSD program, we agree with the commenter. In our proposal we stated that final action on the Alaska infrastructure SIP requirements would be contingent upon our first taking final action on revisions to the Alaska SIP to reflect changes to the NAAQS and federal PSD regulations that we proposed to approve on May 5, 2014 (79 FR 25533). On September 19, 2014, we finalized approval of the revisions, including updates to the PSD program for purposes of PM<sub>2.5</sub> (79 FR 56268). Because we approved the NAAQS and PSD revisions to the Alaska SIP on September 19, 2014, including the PM<sub>2.5</sub> PSD increments, we are now finalizing our infrastructure approval.

With respect to the second part of the comment on Alaska’s minor NSR program, we disagree with the commenter. Alaska’s minor NSR program was originally approved into the SIP by the EPA on July 5, 1983 (48 FR 30623). We recently approved revisions to Alaska’s minor NSR rules on September 19, 2014 (79 FR 56268). In that action, we determined that the revisions to Alaska’s minor NSR program met the federal minor NSR regulatory requirements at 40 CFR 51.160 – 164 “Review of New Sources and Modifications” which include the

requirement at 40 CFR 51.160(a) that all SIPs contain legally enforceable procedures to ensure that construction or modification of a stationary source will not cause a violation of a NAAQS or any applicable portions of the control strategy. Alaska's federally-approved minor NSR rules are located at 18 AAC 50, Article 5 "Minor Permits." 18 AAC 50.542(f)(1)(B) (approval criteria) and 18 AAC 50.544(c)(1) (screening ambient air quality analysis) specifically address the requirement at 40 CFR 51.160(a).

In our September 19, 2014, action we determined that the Alaska minor NSR program meets federal requirements. We are now finalizing our approval of the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) with respect to minor NSR for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

### **III. Final Action**

The EPA is approving the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (H), (J), (K), (L), and (M). We are also approving the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration and visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. In addition, we are approving the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 ozone NAAQS. This action is being taken under section 110 of the CAA.

### **IV. 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 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 (Public Law 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 this action 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **INSERT DATE 60**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. 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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 27, 2014.

Michelle Pirzadeh,  
Acting Regional Administrator,  
Region 10.

For the reasons stated in the preamble, 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. In §52.70, the table in paragraph (e) is amended by adding three entries at the end of the table for: “110(a)(2) Infrastructure Requirements – 1997 PM<sub>2.5</sub> NAAQS.”; “110(a)(2) Infrastructure Requirements – 2006 PM<sub>2.5</sub> NAAQS.”; and “110(a)(2) Infrastructure Requirements – 2008 Ozone NAAQS.”

The additions read as follows:

**§52.70 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* * * * *				
<b>Section 110(a)(2) Infrastructure and Interstate Transport</b>				
* * * * *				
110(a)(2) Infrastructure Requirements – 1997 PM <sub>2.5</sub> NAAQS.	Statewide	7/9/12	[Insert the date of publication in the Federal Register] [Insert Federal Register citation]	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (H), (J), (K), (L), and

				(M) for the 1997 PM <sub>2.5</sub> NAAQS.
110(a)(2) Infrastructure Requirements – 2006 PM <sub>2.5</sub> NAAQS.	Statewide	7/9/12, 3/29/11	<b><u>[Insert the date of publication in the Federal Register]</u></b> <b><u>[Insert Federal Register citation]</u></b>	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (H), (J), (K), (L), and (M) for the 2006 PM <sub>2.5</sub> NAAQS.
110(a)(2) Infrastructure Requirements – 2008 Ozone NAAQS.	Statewide	7/9/12, 3/29/11	<b><u>[Insert the date of publication in the Federal Register]</u></b> <b><u>[Insert Federal Register citation]</u></b>	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2008 Ozone NAAQS.