



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0133, FRL-9949-33-Region 10]

Approval and Promulgation of Implementation Plans; Alaska:
Infrastructure Requirements for the 2010 Nitrogen Dioxide and
2010 Sulfur Dioxide Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, states must submit a plan for the implementation, maintenance and enforcement of such standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve the May 12, 2015 Alaska State Implementation Plan (SIP) submission as meeting the infrastructure requirements for the 2010 nitrogen dioxide (NO₂) and 2010 sulfur dioxide (SO₂) NAAQS.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0133, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <http://www.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 the disclosure of which 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information that is restricted by statute from disclosure. 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 at <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air and Waste, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

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SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

On January 22, 2010, the EPA established a primary NO₂ NAAQS at 100 parts per billion (ppb), averaged over one hour, supplementing the existing annual standard (75 FR 6474). On June 2, 2010, the EPA promulgated a revised primary SO₂ NAAQS at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520). The Clean Air Act (CAA) requires that states submit SIPs meeting CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised NAAQS. CAA sections 110(a)(1) and (2) require states to address basic SIP elements, including but not limited to emissions inventories, monitoring, and modeling to provide for the implementation, maintenance and enforcement of the NAAQS, the so-called infrastructure requirements. On September 13, 2013, the EPA issued guidance to address the infrastructure requirements for multiple standards, including the 2010 NO₂ and SO₂ NAAQS.¹

On May 12, 2015, the Alaska Department of Environmental Conservation (ADEC) made a submission for purposes of CAA sections 110(a)(1) and (2) for the 2010 NO₂ and 2010 SO₂ NAAQS. We note that the submission also included revisions to Alaska's transportation conformity regulations, approved on September 8, 2015 (80 FR 53735), and updates to general

¹ Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum to EPA Air Division Directors, Regions 1 – 10, September 13, 2013.

air quality and permitting regulations, approved on May 19, 2016 (81 FR 31511).

II. Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised standard is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to implement, maintain and enforce the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.

- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance document clarified that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather, are due at the time the nonattainment area plan requirements are due, pursuant to CAA section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR), nor does it address CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not triggered by a new or revised NAAQS, because the visibility requirements in part C, title I of the CAA are not changed by a new or revised NAAQS.

III. EPA Approach to Review of Infrastructure SIP Submissions

The EPA is acting upon the May 12, 2015, submission from Alaska that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO₂ and 2010 SO₂ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the

promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements

for both authority and substantive program provisions.² The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.³ Section 110(a)(2)(I) pertains to nonattainment SIP requirements, and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to

² For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

³ See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

two years, or in some cases three years, for such designations to be promulgated.⁴ This ambiguity illustrates that, rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.⁵ Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS, without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various

⁴ The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

⁵ See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339 (January 22, 2013) (the EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA’s 2008 fine particulate matter (PM_{2.5}) NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS,” (78 FR 4337) (January 22, 2013) (the EPA’s final action on the infrastructure SIP for the 2006 PM_{2.5} NAAQS).

elements and sub-elements of the same infrastructure SIP submission.⁶

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.⁷

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures, and section 110(a)(2)(E)(i) regarding air agency resources and

⁶ On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submission.

⁷ For example, implementation of the 1997 fine particulate matter NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment, and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.⁸ The EPA most recently issued guidance

⁸ The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

for infrastructure SIPs on September 13, 2013 (2013 Guidance).⁹ The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.¹⁰ The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues, and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders, and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting

⁹ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

¹⁰ The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions regarding section 110(a)(2)(D)(i)(I).

or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (a)(2)(D)(i)(II), and (a)(2)(J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166, but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM_{2.5} NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission,

however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions ("SSM");¹¹ (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.¹² It is

¹¹ Subsequent to issuing the 2013 Guidance, the EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

¹² By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1), and the list of elements in 110(a)(2), as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an

infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a “SIP call” whenever the EPA determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.¹³ Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁴ Significantly, the EPA’s determination that an action on a state’s infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on an infrastructure

¹³ For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,” 74 FR 21639 (April 18, 2011).

¹⁴ The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.¹⁵

IV. EPA Evaluation

110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submission: The submission cites Alaska environmental and air quality laws set forth at Alaska Statutes (AS) Chapters 46.03 *Environmental Conservation* and 46.14 *Air Quality Control*, and regulations set forth at 18 AAC 50 Alaska Administrative Code Title 18 *Environmental Conservation*, Chapter 50 *Air Quality Control* (18 AAC 50). The relevant regulations are listed below:

- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.015: Air Quality Designations, Classifications, and Control Regions.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.055: Industrial Processes and Fuel Burning Equipment.
- 18 AAC 50.060: Pulp Mills.
- 18 AAC 50.260: Guidelines for Best Available Retrofit Technology under the Regional

¹⁵ See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

Haze Rule.

- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.
- 18 AAC 50.540: Minor Permit Application.
- 18 AAC 50.542: Minor Permit Review and Issuance.
- 18 AAC Chapter 53 Fuel Requirements for Motor Vehicles.

EPA analysis: On September 19, 2014, the EPA approved numerous revisions to the Alaska SIP, including updates to 18 AAC 50.010 *Ambient Air Quality Standards* to reflect revisions to the NAAQS, including the 2010 NO₂ and the 2010 SO₂ NAAQS (79 FR 56268). In addition, the EPA recently approved updates to a number of regulations in 18 AAC 50 on May 19, 2016 (81 FR 31511).

Alaska generally regulates emissions of NO₂, and SO₂ through its SIP-approved major and minor new source review (NSR) permitting programs, in addition to other rules described below. We note that there are no areas in Alaska currently designated nonattainment for the 2010 NO₂ NAAQS or the 2010 SO₂ NAAQS, and that the EPA has not yet completed designations for the 2010 SO₂ NAAQS. However, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule

than infrastructure SIPs.

Alaska's major NSR program for attainment and unclassifiable areas generally incorporates certain Federal PSD program regulations by reference into the Alaska SIP. The EPA most recently approved revisions to Alaska's PSD permitting program on May 19, 2016 (81 FR 31511). The current Alaska SIP-approved PSD permitting program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 9, 2013.

With respect to Alaska's minor NSR permitting program, we have determined that the program regulates minor sources of NO₂ and SO₂. In addition, Alaska's SIP contains rules that establish controls to limit combustion-generated pollutants. These controls include incinerator emission standards, emission limits for specific industrial processes and fuel burning equipment, emission limits for pulp mills, visible emission limits on marine vessel emissions, and fuel requirements for motor vehicles. Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2010 NO₂ and 2010 SO₂ NAAQS.

In this action, we are not proposing to approve or disapprove any existing Alaska provisions with respect to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such state regulations in a separate action.¹⁶ In the meantime, we encourage any state having a deficient

¹⁶ The EPA issued a final action titled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule." This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM

SSM provision to take steps to correct it as soon as possible.

In addition, we are not proposing to approve or disapprove any existing Alaska rules with respect to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (*e.g.*, November 24, 1987, 52 FR 45109), and the EPA plans to take action in the future to address such state regulations through appropriate statutory mechanisms. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient air quality monitoring/data system

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submission: The submission references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations. AS 46.03.020 *Powers of the department* paragraph (5) provides authority to undertake studies, inquiries, surveys, or analyses essential to the accomplishment of the purposes of ADEC. AS 46.14.180 *Monitoring* provides authority to require sources to monitor emissions and ambient air quality to demonstrate compliance with applicable permit program requirements. 18 AAC 50.201 *Ambient Air Quality Investigation* provides authority to require a source to do emissions testing, reduce emissions, and apply controls to sources.

The submission references ADEC's revised *Quality Assurance Project Plan for the State*

provisions in 39 states' SIPs (June 12, 2015, 80 FR 33840).

of Alaska Air Monitoring and Quality Assurance Program as amended through February 23, 2010. This document is adopted by reference into the State Air Quality Control Plan at 18 AAC 50.030(4). Validated State & Local Air Monitoring Stations, and Special Purpose Monitoring ambient air quality monitoring data are verified, and then electronically reported to the EPA through the Air Quality System on a quarterly basis.

The submission also references 18 AAC 50.035 *Documents, Procedures, and Methods Adopted by Reference* which include the most current, Federal reference and interpretation methods for NO₂ and SO₂. These methods are used by ADEC in its ambient air quality monitoring program to determine compliance with the standards. The submission cites the regulatory requirements related to monitoring found at 18 AAC 50.201 *Ambient Air Quality Investigation*, 18 AAC 50.215 *Ambient Air Quality Analysis Methods*, and 18 AAC 50.220 *Enforceable Test Methods*.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Alaska to the EPA on January 18, 1980 (40 CFR 52.70) and approved by the EPA on April 15, 1981. This air quality monitoring plan has been subsequently updated and approved by the EPA on October 28, 2015. The plan includes the implementation of NO₂ and SO₂ monitoring as required in 40 CFR part 58. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(C): Program for enforcement of control measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement

of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submission: The submission references ADEC's statutory authority to regulate stationary sources via an air permitting program established in AS 46.14 *Air Quality Control*, Article 01 *General Regulations and Classifications* and Article 02 *Emission Control Permit Program*. The submission states that ADEC's PSD/NSR programs were approved by the EPA on August 14, 2007 (72 FR 45378). The submission references the following regulations:

- 18 AAC 50.020: Baseline Dates and Maximum Allowable Increases.
- 18 AAC 50.035: Documents, Procedures and Methods Adopted by Reference.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.045: Prohibitions.
- 18 AAC 50.110: Air Pollution Prohibited.
- 18 AAC 50.215: Ambient Air Quality Analysis Methods.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.502: Minor Permits for Air Quality Protection.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.

The submission states that a violation of the prohibitions in the regulations above, or any permit condition, can result in civil actions (AS 46.03.760 *Civil action for pollution; damages*), administrative penalties (AS 46.03.761 *Administrative penalties*), or criminal penalties (AS

46.03.790 *Criminal penalties*). In addition, the submission refers to regulations pertaining to compliance orders and enforcement proceedings found at 18 AAC Chapter 95 *Administrative Enforcement*.

EPA analysis: With respect to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that Alaska statute provides ADEC authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or the environment. Enforcement cases may be referred to the State Department of Law. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2010 NO₂ and 2010 SO₂ NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with respect to the regulation of construction of new or modified stationary sources, states are required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 NO₂ and 2010 SO₂ NAAQS. As explained above, we are not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA.

The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). Alaska's SIP-approved PSD program incorporates by reference certain Federal PSD program requirements at 40 CFR 52.21. In some cases, ADEC adopted provisions of 40 CFR 51.166 rather than the comparable provisions of 40 CFR 52.21 because 40 CFR 51.166 was

a better fit for a SIP-approved PSD program. The Alaska PSD program incorporates by reference Federal PSD requirements at 40 CFR 52.21 and 40 CFR 51.166 revised as of December 9, 2013.

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 has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gas (GHG) emissions. As discussed below, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to PSD.

On January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (DC Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 PM_{2.5} NAAQS, including the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," (73 FR 28321, May 16, 2008) (2008 PM_{2.5} NSR Implementation Rule). The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 PM_{2.5} NSR Implementation Rule addressed by the Court's decision promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of

subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 PM_{2.5} NSR Implementation Rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 PM_{2.5} NSR Implementation Rule in order to comply with the Court's decision.

Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II) and (J) with respect to the PSD requirements does not conflict with the Court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submissions due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements.

In addition, 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 recently revised federal PSD rules in light of the Supreme Court decision (May 7, 2015, 80 FR 26183). In addition, we anticipate that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. We do not expect that all states have revised their existing PSD program regulations yet, however, we are evaluating submitted PSD program revision to ensure that the state's program correctly addresses GHGs, consistent with the Court's decision.

At present, the EPA has determined the Alaska SIP is sufficient to satisfy CAA section 110(a)(2)(C), (a)(2)(D)(i)(II) and (a)(2)(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.

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 our proposed approval of the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (a)(2)(D)(i)(II) and (a)(2)(J) as those elements relate to a comprehensive PSD program.

Turning to the minor NSR requirement, we have determined that the Alaska Federally-approved minor NSR rules regulate minor sources for purposes of the 2010 NO₂ and 2010 SO₂ NAAQS. Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(D)(i): Interstate transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

We note that Alaska's May 12, 2015, submission does not address the requirements of 110(a)(2)(D)(i)(I) for the 2010 NO₂ and 2010 SO₂ NAAQS. ADEC has addressed these requirements in a separate submission, and we intend to evaluate them in a future action. In this

action, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) for the 2010 NO₂ and 2010 SO₂ NAAQS.

State submission: For purposes of CAA section 110(a)(2)(D)(i)(II), the submission references the Alaska SIP-approved PSD program and the Alaska Regional Haze Plan.

EPA analysis: CAA section 110(a)(2)(D)(i)(II) requires state SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4).

To address whether emissions from sources in Alaska interfere with any other state's required measures to prevent significant deterioration of air quality, the submissions referenced the Alaska Federally-approved PSD program. As discussed above, Alaska's SIP-approved PSD program last revised on May 19, 2016, currently incorporates by reference Federal PSD requirements as of December 9, 2013 (81 FR 31511). We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2010 NO₂ and 2010 SO₂ NAAQS.

To address whether emissions from sources in Alaska interfere with any other state's required measures to protect visibility, the submission references the Alaska Regional Haze SIP, which was submitted to the EPA on March 29, 2011. The Alaska Regional Haze SIP addresses visibility impacts across states within the region. On February 14, 2013, the EPA approved the Alaska Regional Haze SIP, including the requirements for best available retrofit technology (78

FR 10546).

The EPA believes, as noted in the 2013 guidance, that with respect to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration that it satisfies the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to visibility. Because the Alaska Regional Haze SIP was found to meet Federal requirements, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2010 NO₂ and 2010 SO₂ NAAQS (prong 4).

110(a)(2)(D)(ii): Interstate and International transport provisions

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submission: The submission references Alaska's Federally-approved PSD program and revisions to the SIP submitted by ADEC to update the Alaska PSD program.

EPA analysis: At 18 AAC 50.306(b), Alaska's PSD program incorporates by reference the general provisions of 40 CFR 51.166(q)(2) to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by the emissions of sources subject to PSD. As a result, Alaska's PSD regulations provide for notice consistent with the requirements of the Federal PSD program. Alaska also has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Alaska SIP

as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(E): Adequate resources

CAA section 110(a)(2)(E) requires each state to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submission: The submission asserts that ADEC maintains adequate personnel, funding, and authority to implement the SIP. The submission refers to AS 46.14.030 *State Air Quality Control Plan* which provides ADEC statutory authority to act for the State and adopt regulations necessary to implement the State air plan. The submission also references 18 AAC 50.030 *State Air Quality Control Plan* which provides regulatory authority to implement and enforce the SIP.

With respect to CAA section 110(a)(2)(E)(ii), the submission states that Alaska's regulations on conflict of interest are found in Title 2 *Administration*, Chapter 50 *Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying* (2 AAC 50.010 – 2 AAC 50.920). Regulations

concerning financial disclosure are found in Title 2, Chapter 50, Article 1 – *Public Official Financial Disclosure*. There are no state air quality boards in Alaska. The ADEC commissioner, however, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually, by March 15th of each year, with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office. Alaska's Public Officials Financial Disclosure Forms and links to Alaska's financial disclosure regulations can be found at the APOC website:

<http://doe.alaska.gov/apoc/home.html>.

With respect to CAA section 110(a)(2)(E)(iii) and assurances that the State has responsibility for ensuring adequate implementation of the plan where the State has relied on local or regional government agencies, the submission references statutory authority and requirements for establishing local air pollution control programs found at AS 46.14.400 *Local air quality control programs*.

The submission also states that ADEC provides technical assistance and regulatory oversight to the Municipality of Anchorage (MOA), Fairbanks North Star Borough (FNSB) and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the MOA and FNSB that allows them to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the MOA and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the airshed common to the two jurisdictions. In addition, ADEC indicates the department works

closely with local agencies on nonattainment plans.

EPA analysis: We are proposing to find that the Alaska SIP meets the adequate personnel, funding and authority requirements of CAA section 110(a)(2)(E)(i). Alaska receives sections 103 and 105 grant funds from the EPA and provides matching funds necessary to carry out SIP requirements. For purposes of CAA section 110(a)(2)(E)(ii), we previously approved Alaska's conflict of interest disclosure and ethics regulations as meeting the requirements of CAA section 128 on October 22, 2012 (77 FR 64427). Finally, we are proposing to find that Alaska has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(F): Stationary source monitoring system

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submission: The submission states that ADEC has general statutory authority in AS 46.14 *Air Quality Control* to regulate stationary sources via an air permitting program which

includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. The submission states ADEC has regulatory authority to determine compliance with these statutes via information requests (18 AAC 50.200) and ambient air quality investigations (18 AAC 50.201). Monitoring protocols and test methods for stationary sources are adopted by reference, including the Federal reference and interpretation methods for NO₂ and SO₂. The submission also references the SIP-approved Alaska PSD program. Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis.

The submission refers to the following statutory and regulatory provisions which provide authority and requirements for source emissions monitoring, reporting, and correlation with emission limits or standards:

- AS 46.14.140: Emission control permit program regulations.
- AS 46.14.180: Monitoring.
- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.030: State Air Quality Control Plan.
- 18 AAC 50.035: Documents, Procedures, and Methods Adopted by Reference.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.200: Information Requests.
- 18 AAC 50.201: Ambient Air Quality Investigation.

- 18 AAC 50.220: Enforceable test methods.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.544: Minor Permits: Content.

EPA analysis: The Alaska SIP establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. 18 AAC 50.200 *Information Requests* provides ADEC authority to issue information requests to an owner, operator, or permittee for purposes of ascertaining compliance. 18 AAC 50.201 *Ambient Air Quality Investigations* provides authority to require an owner, operator, or permittee to evaluate the effect emissions from the source have on ambient air quality. In addition, 18 AAC 50.306 *Prevention of Significant Deterioration Permits* and 18 AAC 50.544 *Minor Permits: Content* provide for establishing permit conditions to require the permittee to install, use and maintain monitoring equipment, sample emissions, provide source test reports, monitoring data, emissions data, and information from analysis, keep records and make periodic reports on process operations and emissions. This information is made available to the public through public processes outlined in these SIP-approved rules.

Additionally, states are required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a

comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>. Based on the above analysis, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(G): Emergency episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

State submission: The submission cites statutory authority including AS 46.03.820 *Emergency powers* which provides ADEC with emergency order authority where there is an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment. The submission also refers to 18 AAC 50.245 *Air Episodes and Advisories* which authorizes ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to

restrain any source from causing or contributing to emissions which present an “imminent and substantial endangerment to public health or welfare, or the environment.” The EPA finds that AS 46.03.820 *Emergency Powers* provides emergency order authority comparable to CAA Section 303. We also find that Alaska’s emergency episode rule at 18 AAC 50.245 *Air Episodes and Advisories*, most recently approved by the EPA on August 14, 2007 (72 FR 45378), is consistent with the requirements of 40 CFR part 51 subpart H for NO₂ and SO₂ (prevention of air pollution emergency episodes, §§ 51.150 through 51.153). Specifically, 40 CFR 51.150 through 51.153 prescribes the requirements for emergency episode plans based on classification of regions in a state. As listed in 40 CFR 52.71 *Classification of Regions*, all regions in Alaska are classified Priority III for both NO₂ and SO₂. Areas classified Priority III do not need to develop episode plans under 40 CFR 51.150 through 51.153.

Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submission: The submission refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) *Powers of the Department* and AS 46.14.010(a) *Emission Control Regulations*. The submission also refers to regulatory authority to implement provisions of the CAA at 18 AAC 50.010 *Ambient Air Quality Standards*. The submission affirms that ADEC regularly updates the Alaska SIP as new NAAQS are promulgated by the EPA.

EPA analysis: As cited above, the Alaska SIP provides for revisions, and in practice, Alaska regularly submits SIP revisions to the EPA to take into account revisions to the NAAQS and other Federal regulatory changes. We have approved revisions to the Alaska SIP on numerous occasions in the past, most recently on May 19, 2016 (81 FR 31511), March 18, 2015 (80 FR 14038), September 19, 2014 (79 FR 56268), August 9, 2013 (78 FR 48611), May 9, 2013 (78 FR 27071) and January 7, 2013 (78 FR 900). We are proposing to approve the Alaska SIP as meeting the requirements of section 110(a)(2)(H) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(I): Nonattainment area plan revision under part D

EPA analysis: There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1), because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii)

submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers with respect to NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submission: The submission refers to statutory authority to consult and cooperate with officials of local governments, state and Federal agencies, and non-profit groups found at AS 46.030.020 *Powers of the department* paragraphs (3) and (8). The submission states that municipalities and local air quality districts seeking approval for a local air quality control program shall enter into a cooperative agreement with ADEC according to AS 46.14.400 *Local air quality control programs*, paragraph (d). ADEC can adopt new CAA regulations only after a public hearing as per AS 46.14.010 *Emission control regulations*, paragraph (a). In addition, the submission states that public notice and public hearing regulations for SIP submission and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, the

submission also references the SIP-approved Alaska PSD program.

EPA analysis: The EPA finds that the Alaska SIP, including the Alaska rules for major source permitting, contains provisions for consulting with government officials as specified in CAA section 121. Alaska's PSD program provides opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies. We most recently approved revisions to the Alaska PSD program on May 19, 2016 (81 FR 31511). In addition, the EPA most recently approved the Alaska rules that define transportation conformity consultation on September 8, 2015 (80 FR 53735). Finally, on February 14, 2013, we approved the Alaska Regional Haze SIP (78 FR 10546).

ADEC routinely coordinates with local governments, states, Federal land managers and other stakeholders on air quality issues including transportation conformity and regional haze, and provides notice to appropriate agencies related to permitting actions. Alaska regularly participates in regional planning processes including the Western Regional Air Partnership, which is a voluntary partnership of states, tribes, Federal land managers, local air agencies and the EPA, whose purpose is to understand current and evolving regional air quality issues in the West. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2010 NO₂ and 2010 SO₂ NAAQS.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. ADEC is a partner in the EPA's AIRNOW and Enviroflash Air Quality Alert programs, which

provide air quality information to the public for five major air pollutants regulated by the CAA: ground-level ozone, particulate matter, carbon monoxide, SO₂, and NO₂. Alaska also provides real-time air monitoring information to the public on the ADEC air quality website at <http://dec.alaska.gov/applications/air/envistaweb/>, in addition to air advisory information. During the summer months, the Fairbanks North Star Borough prepares a weekly Air Quality forecast for the Fairbanks area at <http://co.fairbanks.ak.us/airquality/>. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 2010 NO₂ and 2010 SO₂ NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 2010 NO₂ and 2010 SO₂ NAAQS. We note that our proposed approval of element 110(a)(2)(J) with respect to PSD is not affected by recent court vacatur of the EPA's PSD implementing regulations. Please see our discussion regarding section 110(a)(2)(C).

With respect to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement related to visibility triggered under CAA section 110(a)(2)(J) when a new

NAAQS becomes effective. Based on the analysis above, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(K): Air quality and modeling/data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submission: The submission states that air quality modeling is regulated under 18 AAC 50.215(b) *Ambient Air Quality Analysis Methods*. Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040 *Federal Standards Adopted by Reference*. Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020 *Baseline Dates and Maximum Allowable Increases*.

EPA analysis: On May 19, 2016, we approved revisions to 18 AAC 50.215 *Ambient Air Quality Analysis Methods* and 18 AAC 50.040 *Federal Standards Adopted by Reference* (81 FR 31511). 18 AAC 50.040, at paragraph (f), incorporates by reference the EPA regulations at 40 CFR part 51, Appendix W *Guidelines on Air Quality Models* revised as of July 1, 2013.

Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the

requirements of CAA section 110(a)(2)(K) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submission: The submission states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 *Permit Administration Fees* and AS 46.14.250 *Emission Fees*. The permit fees for stationary sources are assessed and collected by the Air Permits Program according to 18 AAC 50, Article 4. ADEC is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410).

EPA analysis: The EPA fully approved Alaska's title V program on July 26, 2001 (66 FR 38940) with an effective date of September 24, 2001. While Alaska's operating permit program is not formally approved into the SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. The Alaska title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i).

In addition, Alaska regulations at 18 AAC 50.306(d)(2) and 18 AAC 50.311(d)(2) require fees for purposes of major new source permitting as specified in 18 AAC 50.400 through 18 AAC 50.499. Therefore, we are proposing to conclude that Alaska has satisfied the requirements of CAA section 110(a)(2)(L) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(M): Consultation/participation by affected local entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submission: The submission states ADEC has authority to consult and cooperate with officials and representatives of any organization in the State; and persons, organization, and groups, public and private using, served by, interested in, or concerned with the environment of the state. The submission refers to AS 46.030.020 *Powers of the department* paragraphs (3) and (8) which provide authority to ADEC to consult and cooperate with affected State and local entities. In addition, AS 46.14.400 *Local air quality control programs* paragraph (d) provides authority for local air quality control programs and requires cooperative agreements between ADEC and local air quality control programs that specify the respective duties, funding, enforcement responsibilities, and procedures.

EPA analysis: The EPA finds that the Alaska provisions cited above provide for local and regional authorities to participate and consult in the SIP development process. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2010 NO₂ and 2010 SO₂ NAAQS.

V. Proposed Action

We are proposing to approve the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 2010 NO₂ and 2010 SO₂ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

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, 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 (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 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).

In addition, 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 21, 2016.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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