



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2018-0810, FRL-10001-04-Region 10]

Air Plan Approval; AK: Infrastructure Requirements for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard is promulgated, the Clean Air Act requires states to submit plans for the implementation, maintenance, and enforcement of such standard, commonly referred to as infrastructure requirements. On October 25, 2018, the State of Alaska submitted such a plan for the ozone standard revised on October 1, 2015. In this action, the Environmental Protection Agency (EPA) is proposing to approve the Alaska plan as meeting applicable infrastructure requirements.

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-2018-0810, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not electronically submit 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, (206) 553-6357, hall.kristin@epa.gov, or Attn: Kristin Hall (15-H13), Air and Radiation Division, EPA Region 10, 1200 6th Avenue (Suite 155), Seattle, WA 98101.

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

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I. Background

On October 1, 2015, the Environmental Protection Agency (EPA) revised the existing ozone National Ambient Air Quality Standard (NAAQS), lowering the level of both the primary and secondary standards from 0.075 parts per million (ppm) to 0.070 ppm, among other changes.¹ The revision triggered the Clean Air Act (CAA) requirement for states to submit State Implementation Plans (SIPs) addressing basic infrastructure elements required to implement,

¹ National Ambient Air Quality Standards for Ozone, Final rule (October 26, 2015, 80 FR 65292).

maintain, and enforce the 2015 ozone NAAQS. On October 25, 2018, the Alaska Department of Environmental Conservation (ADEC) made such a submission.²

II. Infrastructure Elements

The CAA provides the procedure and timing for infrastructure SIP submissions and lists the required elements, set forth at sections 110(a)(1) and (2), respectively. The EPA has issued guidance to help states address these requirements, most recently on September 13, 2013 (2013 Guidance).³ The elements and corresponding CAA subsections 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 episodes.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.

² Alaska's October 25, 2018 submission not only addresses infrastructure requirements, but also requests EPA approval of regulatory updates and permitting rule revisions. The EPA approved the regulatory updates and permitting rule revisions in a separate rulemaking on August 29, 2019 (84 FR 45419).

³ 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. The 2013 Guidance is available in the docket for this action and at <https://www.epa.gov/air-quality-implementation-plans/infrastructure-sip-requirements-and-guidance>.

- 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 2013 Guidance restated the EPA's interpretation that two elements are not governed by the three-year submission deadline in CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on separate schedules.⁴ The two elements are: (i) 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) CAA section 110(a)(2)(I). As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR), nor does it address CAA section 110(a)(2)(I). The EPA has also determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach to Review of Infrastructure SIP Submissions

Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions in the 2013 Guidance and through regional actions on

⁴ These schedules are governed by CAA section 172 and the various pollutant-specific subparts 2 through 5 of part D, title I, of the CAA.

infrastructure submissions.⁵ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁶ The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

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 regulations set forth at Alaska Administrative Code Title 18 *Environmental Conservation*, Chapter 50 *Air Quality Control* (18 AAC 50):

- Article 1 Ambient Air Quality Management (18 AAC 50.005 – 18 AAC 50.110);
- Article 2 Program Administration (18 AAC 50.200 – 18 AAC 50.260);
- Article 3 Major Stationary Source Permits (18 AAC 50.300 – 18 AAC 50.390);
- Article 4 User Fees (18 AAC 50.400 – 18 AAC 50.499);

⁵ The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available in the docket for this action and at <https://www.epa.gov/air-quality-implementation-plans/infrastructure-sip-requirements-and-guidance>) as well as in numerous agency actions, including the EPA's prior action on Alaska's infrastructure SIP submission to address the 2010 nitrogen dioxide and 2010 sulfur dioxide NAAQS (May 12, 2017, 82 FR 22081). Please see our associated July 20, 2016, proposed rule for this discussion (81 FR 47103, at pages 47104 through 47107).

⁶ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

- Article 5 Minor Permits (18 AAC 50.502 – 18 AAC 50.560);
- Article 7 Transportation Conformity (18 AAC 50.700 – 18 AAC 50.750); and
- Article 9 General Provisions (18 AAC 50.900 – 18 AAC 50.990).

EPA analysis: Alaska adopted the 2015 ozone NAAQS into State regulation, submitted the revision to the EPA, and we approved the change on August 28, 2017 (82 FR 40712). As a result, Alaska’s ambient air quality standards codified in 18 AAC 50.010 are consistent with the current 2015 ozone NAAQS. Alaska generally regulates emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) as precursors to ozone through its SIP-approved stationary source preconstruction permitting programs, set forth in Articles 3 and 5 of 18 AAC 50, in addition to other regulations approved into the SIP and described in this section. Stationary source preconstruction permitting is known as “new source review” or “NSR” and establishes requirements based on size and location of sources, among other things. Major NSR permitting in attainment and unclassifiable areas is called “prevention of significant deterioration” or “PSD” permitting.

The Alaska PSD permitting program is governed by 18 AAC 50, Article 3, references a suite of regulations approved into the Alaska SIP, and makes use of certain Federal PSD requirements set forth in the Code of Federal Regulations (CFR) and incorporated by reference into the Alaska SIP in 18 AAC 50.040. See 40 CFR 52.96. The EPA most recently approved updates to the Alaska PSD permitting program on August 29, 2019 (84 FR 45419). The current SIP-approved Alaska PSD permitting program incorporates by reference specific Federal requirements in 40 CFR 52.21, 40 CFR 51.166, and 40 CFR part 51, appendix W, as of July 1, 2017. The program has been updated for the 2015 ozone NAAQS and regulates NO_x and VOCs

as precursors to ozone formation, consistent with the EPA's implementing regulations at 40 CFR 51.166.

Turning to minor sources, Article 5 of 18 AAC 50 requires pre-construction permitting for subject new and modified minor stationary sources. SIP-approved minor NSR programs and revisions to such programs must be consistent with the EPA's implementing regulations at 40 CFR 51.160 through 51.164. Alaska's minor NSR program was originally approved into the Alaska SIP on July 5, 1983 (48 FR 30623). We have approved subsequent revisions, most recently on August 29, 2019 (84 FR 45419).

Alaska has no areas designated nonattainment for the 2015 ozone NAAQS. We note, however, as highlighted in Section II of this proposal, 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.

In addition to permitting requirements, Alaska's SIP contains rules that also serve to limit NO_x and VOCs. These rules include incinerator emission standards, emission limits for industrial processes, and emission limits for fuel burning equipment. 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 2015 ozone NAAQS.

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, the collection and analysis of

ambient air quality data, and the availability of data to the EPA upon request.

State submission: The submission references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations. Alaska Statutes (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 of Alaska Air Monitoring and Quality Assurance Program*, adopted by reference into the State Air Quality Control Plan. As described in this plan, ambient air quality monitoring data are verified and electronically reported to the EPA through the Air Quality System on a quarterly basis. The submission also references the adoption of the Federal reference and interpretation methods for ozone. These methods are used by ADEC in its ambient air quality monitoring program to determine compliance with the standards.

EPA analysis: A comprehensive air quality monitoring plan to meet CAA monitoring requirements was originally submitted by Alaska on January 18, 1980 (40 CFR 52.70) and approved by the EPA on April 15, 1981 (46 FR 21994). The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including ozone monitoring. Alaska's SIP-approved regulations in Article 2 of 18 AAC 50 govern source-specific monitoring and emissions testing for NO_x and VOCs in accordance with Federal reference

methods. Alaska regularly assesses the adequacy of the monitoring network and submits that assessment to the EPA for review. In practice, Alaska operates an ozone monitoring network, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone 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: With respect to enforcement, the submission states that a violation of the prohibitions in the Alaska State Air Plan, or any permit condition, can result in civil actions (AS 46.03.760), administrative penalties (AS 46.03.761), or criminal penalties (AS 46.03.790). In addition, the submission references compliance order and administrative enforcement proceeding provisions found at 18 AAC Chapter 95. With respect to construction of new and modified stationary sources, the submission points to ADEC's statutory authority established in AS 46.14 *Air Quality Control*, Article 01 *General Regulations and Classifications* and Article 02 *Emission Control Permit Program* and references the SIP-approved Alaska NSR programs.

EPA analysis: We are proposing to find that the aforementioned 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. AS 46.03.820 *Emergency powers* affords ADEC 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 2015 ozone NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) for 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 2015 ozone 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.

For the PSD portion of element 110(a)(2)(C) (as well as for the PSD portions of elements (D)(i)(II) and (J)) the EPA interprets the CAA to require an infrastructure submission that demonstrates a complete PSD permitting program meeting current requirements for all regulated NSR pollutants. Alaska has a SIP-approved PSD program, and the EPA most recently approved updates to the program on August 29, 2019 (84 FR 45419). The current SIP-approved Alaska PSD permitting program incorporates by reference specific Federal requirements in 40 CFR 52.21, 40 CFR 51.166, and 40 CFR part 51, appendix W, as of July 1, 2017. We note the Alaska SIP includes the recent changes to air quality model guidelines in 40 CFR part 51, appendix W, promulgated by the EPA on January 19, 2017 (82 FR 5182). The most recent version of the appendix W model guidelines is referenced in 18 AAC 50.215 *Ambient Air Quality Analysis Methods*, and the rule provision is part of Alaska's SIP-approved PSD permitting program. *See* 40 CFR 52.96. The Alaska SIP-approved PSD permitting program regulates NO_x and VOCs as precursors to ozone, consistent with the EPA's implementing regulations at 40 CFR 51.166. We

are therefore proposing to approve element 110(a)(2)(C) for PSD with respect to the 2015 ozone NAAQS.

Turning to the minor NSR requirement, the EPA originally approved Alaska's minor NSR program into the SIP on July 5, 1983 (48 FR 30623). As described previously under CAA section 110(a)(2)(A), we have approved revisions to Alaska's program as consistent with Federal minor NSR requirements set forth at 40 CFR 51.160 through 51.164. We have determined that the program regulates construction of new and modified minor sources for purposes of the 2015 ozone NAAQS, consistent with the EPA's implementing regulations at 40 CFR 51.160 through 51.164. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2015 ozone NAAQS.

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

CAA section 110(a)(2)(D)(i) is known as the "good neighbor" provision and generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called "prongs" within CAA section 110(a)(2)(D)(i): section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This proposed action addresses prongs 3 and 4 only. We proposed action on the portion of the submission addressing CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 on June 5, 2019 (84 FR 26041).

110(a)(2)(D)(i)(II): prongs 3 and 4

Prongs 3 and 4 of the good neighbor provision require that a SIP 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) or which will interfere with

any other state's required measures to protect visibility (prong 4). The EPA believes, as noted in the 2013 Guidance, that where a state has a SIP-approved PSD program, the state may rely on such a program to meet prong 3. Likewise, where a state's regional haze plan has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration for prong 4.

Submission: The submission addresses CAA section 110(a)(2)(D)(i)(II) prongs 3 and 4 for the 2015 ozone NAAQS by referencing the Alaska SIP-approved PSD and regional haze programs, respectively.

EPA analysis: For purposes of CAA section 110(a)(2)(D)(i)(II) prongs 3 and 4, the EPA believes, as noted in the 2013 Guidance, that where a state has a SIP-approved PSD program, the state may rely on such a program to meet prong 3. Likewise, where a state's regional haze plan has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration for prong 4.

As stated in the analysis for element CAA section 110(a)(2)(C) in this proposal, the Alaska SIP-approved PSD permitting program regulates NO_x and VOCs as precursors to ozone, consistent with the EPA's implementing regulations at 40 CFR 51.166. Therefore, we are proposing to approve the Alaska SIP as meeting CAA section 110(a)(2)(D)(i)(II) as it applies to PSD for the 2015 ozone NAAQS (prong 3). In addition, Alaska has a SIP-approved regional haze plan, approved by the EPA on February 14, 2013 (78 FR 10546). Because the regional haze plan was found to meet Federal requirements, we are proposing to approve the Alaska SIP as meeting CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2015 ozone 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). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

State submission: The submission references Alaska's SIP-approved PSD program and certifies that Alaska has no pending obligations under CAA section 115 or 126.

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 CAA section 126(a) and Federal requirements. We confirm that Alaska 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 2015 ozone 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 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*. The submission certifies 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 with the Alaska Public Offices Commission (APOC). These disclosures are publicly available through APOC's Anchorage office.

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 local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has formal agreements with local entities to control emissions and improve air quality in specific localities.

EPA analysis: With respect to CAA section 110(a)(2)(E)(i) adequate personnel, funding, and authority, AS 46.03.020 *Powers of the department* gives ADEC authority to adopt regulations providing for control, prevention and abatement of air pollution. 18 AAC 50.030 *State Air Quality Control Plan* authorizes ADEC to implement air pollution regulations across the State. ADEC receives CAA sections 103 and 105 grant funds from the EPA and provides matching funds necessary to staff and carry out SIP requirements. Alaska statutes AS 46.14.240 and 250 establish departmental authority to assess permit and emission fees, respectively. Subject sources must pay fees to ADEC for purposes of major new source review permitting in accordance with 18 AAC 50, Articles 3 and 4. In addition, although not formally approved into the SIP, Alaska's title V operating permit program is a legal mechanism the State can use to ensure ADEC has sufficient personnel and resources to support the air program, consistent with the requirements of the SIP. Please see our analysis under the CAA section 110(a)(2)(L) element.

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). This prior approval action fully satisfies the state board requirements of CAA section 110(a)(2)(E)(ii).

Finally, with respect to CAA section 110(a)(2)(E)(iii), AS 46.14.400 makes clear 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. According to statute, ADEC enters into cooperative agreements with local entities to implement specific air quality control requirements. ADEC has done so with the Municipality of Anchorage and the Fairbanks North Star Borough. The State retains authority and oversight of local entities as specified in AS 46.14.400 and may terminate an inadequate local program in accordance with AS 46.14.401. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2015 ozone 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 that 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 ozone. 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.

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. 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. As required, Alaska reports 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. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <https://www.epa.gov/air-emissions-inventories>. 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 2015 ozone 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 references 18 AAC 50.245, authorizing ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action, consistent with the EPA's emergency episode regulations at 40 CFR 51.150 through 51.153, for purposes of the 2015 ozone NAAQS.

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, most recently approved by the EPA on September 8, 2017 (82 FR 40712), is consistent with the requirements of 40 CFR 51.150 through 51.153 for ozone. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

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

CAA section 110(a)(2)(H) requires that SIPs provide for revision of the plan (i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining the standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds 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 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*.

EPA analysis: The Alaska SIP provides for revisions as cited in the submission, and in practice, Alaska regularly submits SIP revisions to the EPA to account for changes to the NAAQS and other requirements. We most recently approved revisions to the Alaska SIP on

August 29, 2019 (84 FR 45419), September 8, 2017 (82 FR 42457), August 28, 2017 (82 FR 40712), May 19, 2016 (81 FR 31511), March 18, 2015 (80 FR 14038), and September 19, 2014 (79 FR 56268). We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2015 ozone 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 due on a different timeline, pursuant to section 172 and the various pollutant specific subparts 2 through 5 of part D. As a result, this action does not address 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 notes 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 major NSR program, contains provisions for consulting with government officials as specified in CAA section 121. Alaska's SIP-approved PSD program provides opportunity and procedures for public comment and notice to appropriate Federal, State and local agencies. We recently approved updates to the SIP-approved PSD program on August 29, 2019 (84 FR 45419). In addition, we approved significant updates to the Alaska rules that define transportation conformity consultation on September 8, 2015 (80 FR 53735) and regional haze interagency planning on February 14, 2013, (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 2015 ozone NAAQS.

Section 110(a)(2)(J) also requires the public to 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, sulfur dioxide, and nitrogen dioxide. Alaska also provides real-time air monitoring information to the public on the ADEC air quality website, in addition to air advisory information. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 2015 ozone 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) and permitting. Alaska has a SIP-approved PSD program, and the EPA most recently approved updates to the program on August 29, 2019 (84 FR 45419). As described in this proposal as part of the analysis section for element CAA section 110(a)(2)(C), the Alaska SIP-approved PSD permitting program regulates NO_x and VOCs as precursors to ozone, consistent with the EPA's implementing regulations at 40 CFR 51.166. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 2015 ozone NAAQS.

With respect to visibility protection under element (J), 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.

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

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of 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 NAAQS, 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 August 29, 2019 we approved revisions to 18 AAC 50.215 *Ambient Air Quality Analysis Methods* and 18 AAC 50.040 *Federal Standards Adopted by Reference* (84 FR 45419). 18 AAC 50.040, at paragraph (f), adopts by reference the EPA regulations at 40 CFR part 51, appendix W, *Guidelines on Air Quality Models* revised as of July 1, 2017. The Alaska SIP incorporates the EPA's revisions and additions to appendix W promulgated on January 17,

2017 (82 FR 5182). Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

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

CAA section 110(a)(2)(L) directs 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). 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 title V 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 SIP-approved 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, Article 4. Therefore, we are proposing to conclude that Alaska has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone 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 that 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.

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 2015 ozone 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 2015 ozone NAAQS: (A), (B), (C), (D)(i)(I), (D)(ii), (E), (F), (H), (J), (K), (L), and (M).

VI. Statutory and Executive Order Review

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);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 27, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

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