



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 52

[EPA-R10-OAR-2019-0412; FRL-10008-76-Region 10]

#### **Determination of Failure to Attain by the Attainment Date and Denial of Serious Area Attainment Date Extension Request; AK: Fairbanks North Star Borough 2006 24-hour Fine Particulate Matter Serious Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that the Fairbanks North Star Borough nonattainment area failed to attain the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) by the December 31, 2019 “Serious” area attainment date. This proposed determination is based on complete, quality-assured and certified PM<sub>2.5</sub> monitoring data for 2017-2019. The EPA is also proposing to deny the State’s request for an extension of the Serious area attainment date for the Fairbanks North Star Borough nonattainment area. Upon finalization of these determinations, the State will be subject to further statutory and regulatory requirements for this area, including a new State Implementation Plan (SIP) submission meeting additional requirements that the State must submit by December 31, 2020.

**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-2019-0412, 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 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Matthew Jentgen at (206) 553-0340, or [jentgen.matthew@epa.gov](mailto:jentgen.matthew@epa.gov).

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

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Summary of Proposal and Background
- II. Criteria for Determining Whether an Area Has Attained the 2006 24-Hour PM<sub>2.5</sub> NAAQS
- III. Proposed Finding of Failure to Attain the NAAQS
- IV. Proposed Action on CAA Section 188(e) Extension Request
- V. Summary of Proposed Action
- VI. Statutory and Executive Order Reviews

**I. Summary of Proposal and Background**

In 2009, the EPA designated a portion of the Fairbanks North Star Borough as “nonattainment” for the 2006 24-hour PM<sub>2.5</sub> NAAQS of 35 micrograms per cubic meter (µg/m<sup>3</sup>) (Fairbanks PM<sub>2.5</sub> Nonattainment Area) (74 FR 58688, November 13, 2009). On May 10, 2017,

the Fairbanks PM<sub>2.5</sub> Nonattainment Area was reclassified as a “Serious” nonattainment area by operation of law for failure to attain this NAAQS by the outermost Moderate area attainment date of December 31, 2015 (82 FR 21711). Clean Air Act (CAA) section 188(c)(2) requires states with PM<sub>2.5</sub> nonattainment areas classified as Serious to attain the NAAQS as expeditiously as practicable, but no later than the end of the tenth calendar year following the effective date of the initial nonattainment designation of the area. Thus, for the Fairbanks PM<sub>2.5</sub> Nonattainment Area, the attainment date was as expeditiously as practicable but no later than December 31, 2019. CAA section 179(c)(1) requires that the EPA, as expeditiously as practicable after the applicable attainment date for any nonattainment area but no later than 6 months after such date, determine whether the area attained the relevant NAAQS by the applicable attainment date, based on the area’s air quality as of the attainment date. The 2017-2019 24-hr PM<sub>2.5</sub> design value at the Hurst Road monitor (Air Quality System (AQS) site monitor 02-900-0035) in the Fairbanks PM<sub>2.5</sub> Nonattainment Area is 69 µg/m<sup>3</sup>.<sup>1</sup>

In accordance with CAA section 189(b)(1) and 40 CFR 51.1004(a)(2), if a state’s attainment plan for the 2006 24-hour PM<sub>2.5</sub> NAAQS demonstrates that the PM<sub>2.5</sub> nonattainment area cannot practicably attain the PM<sub>2.5</sub> NAAQS by the end of the tenth calendar year following designation, the state must request an extension of that attainment date pursuant to CAA section 188(e). The State included such a request in its December 13, 2019 Serious attainment plan for the Fairbanks PM<sub>2.5</sub> Nonattainment Area (Fairbanks Serious SIP Submission).

## **II. Criteria for Determining Whether an Area Has Attained the 2006 24-Hour PM<sub>2.5</sub> NAAQS**

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<sup>1</sup> The EPA’s review of Alaska’s certified 2017-2019 air quality monitor data for the Fairbanks PM<sub>2.5</sub> Nonattainment Area is included in the docket for this action.

Under EPA regulations at 40 CFR part 50, appendix N, the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS are met within a nonattainment area when the 24-hour PM<sub>2.5</sub> NAAQS design value at each eligible monitoring site is less than or equal to 35 µg/m<sup>3</sup>. Three years of valid annual PM<sub>2.5</sub> 98th percentile mass concentrations are required to produce a valid 24-hour PM<sub>2.5</sub> NAAQS design value.

The EPA's determination of attainment status is based upon data that the State has collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's AQS database. Ambient air quality monitoring data for the 3-year period must meet data completion criteria or data substitution criteria according to 40 CFR part 50, appendix N. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year are at least 75 percent. However, appendix N states that years shall be considered valid, notwithstanding quarters with less than complete data, if the resulting annual 98th percentile value or resulting 24-hour NAAQS design value is greater than the level of the standard.

### **III. Proposed Finding of Failure to Attain the NAAQS**

According to CAA section 188(c)(2), the attainment date for the Fairbanks PM<sub>2.5</sub> Nonattainment Area for the 2006 24-hr PM<sub>2.5</sub> Serious nonattainment area was to be as expeditiously as practicable, but not later than December 31, 2019. Because the 2017-2019 24-hour PM<sub>2.5</sub> design value for the area of 69 µg/m<sup>3</sup> is above the level of the relevant NAAQS, the Fairbanks PM<sub>2.5</sub> Nonattainment Area did not attain the NAAQS by the applicable attainment date. Therefore, the EPA is proposing to find that the Fairbanks PM<sub>2.5</sub> Nonattainment Area failed to attain the 2006 24-hour NAAQS by the outermost applicable Serious area nonattainment date.

### **IV. Proposed Action on CAA Section 188(e) Extension Request**

In accordance with CAA section 189(b)(1)(A) and 40 CFR 51.1004(a)(2)(ii), a state that submits an attainment plan SIP submission that demonstrates that a Serious PM<sub>2.5</sub> nonattainment area cannot practicably attain the PM<sub>2.5</sub> NAAQS by the end of the tenth calendar year following the effective date of designation<sup>2</sup> must request to extend the Serious area attainment date pursuant to CAA section 188(e) and 40 CFR 51.1005(b). In accordance with 40 CFR 51.1004(a)(2)(ii), the state's extension request must also propose a projected attainment date that is as expeditious as practicable, but no later than the fifteenth calendar year following the effective date of designation for the area.<sup>3</sup>

Consistent with CAA section 188(e) and 40 CFR 51.1005(b), the EPA may grant at most one extension for a Serious nonattainment area of no more than five years, if the following conditions are met: (i) the state demonstrates that attainment of the applicable PM<sub>2.5</sub> NAAQS by the approved or statutory attainment date for the area would be impracticable; (ii) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and, (iii) the state demonstrates that the attainment plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area consistent with 40 CFR 51.1010(b).

The Fairbanks Serious SIP Submission includes a demonstration that attainment of the PM<sub>2.5</sub> NAAQS by December 31, 2019, is not practicable. The Fairbanks Serious SIP Submission also includes a request pursuant to CAA section 188(e) and 40 CFR 51.1005(b) to extend the

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<sup>2</sup> For the Fairbanks PM<sub>2.5</sub> Nonattainment Area, the tenth calendar year following the effective date of redesignation is December 31, 2019.

<sup>3</sup> For the Fairbanks PM<sub>2.5</sub> Nonattainment Area, the fifteenth calendar year following the effective date of designation is December 31, 2024.

Serious area nonattainment date to December 31, 2024.<sup>4</sup> The EPA is proposing to deny the State's extension request based on the reasoning below.

Alaska's request does not propose a projected attainment date on or before December 31, 2024. The Attainment Demonstration chapter of the Fairbank Serious SIP Submission includes two projected attainment dates: December 31, 2024 and December 31, 2029.<sup>5</sup> As explained by the State in the Fairbanks Serious SIP Submission, the modeling associated with the 2024 projected attainment date assumes that all wood-burning within the nonattainment area ceases when required (i.e., 100% compliance with the Stage 2 curtailments except for those structures that qualify for No Other Adequate Source of Heat (NOASH) waivers).<sup>6</sup> According to the State, however, due to the sub-arctic conditions and high energy costs in the community, this projection is unrealistic and not practicable.<sup>7</sup> The State thus predicts that 2029 is the most expeditious attainment date. Therefore, the State's attainment date extension request does not comply with the explicit timing requirements and limitations of 40 CFR 51.1004(a)(2)(ii) or with those of CAA section 188(e).

The Fairbanks Serious SIP Submission also does not include MSMs that are included in the attainment plan of any state, or are achieved in practice in any state, that can feasibly be implemented in the Fairbanks area. EPA regulations at 40 CFR 51.1010(b) specify the process states must follow to identify, adopt, and implement MSMs. In accordance with 40 CFR 51.1010(b)(2)(i), for the sources and source categories represented in the emission inventory for the nonattainment area, the state is required to identify the MSMs for reducing direct PM<sub>2.5</sub> and PM<sub>2.5</sub> plan precursors adopted into any SIP or used in practice to control emissions in any state.

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<sup>4</sup> State Air Quality Control Plan Volume II: III.D.7.9.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5

<sup>7</sup> *Id.*

The Fairbanks Serious SIP Submission does not demonstrate that Alaska identified, adopted, and implemented MSMs for each source or source category in the emissions inventory. The Control Strategy chapter of the Fairbanks Serious SIP Submission focuses exclusively on identifying, adopting, and implementing best available control measures (BACM) pursuant to CAA section 189(b) and 40 CFR 51.1010(a).<sup>8</sup>

In the Fairbanks Serious SIP Submission, Alaska adopted one measure that it identified as an MSM for the residential home heating source category.<sup>9</sup> However, instead of imposing this measure for purposes of meeting the MSM requirement for this source category, the State relies upon this same measure to address the contingency measure requirement of the Serious area attainment plan SIP.<sup>10</sup> Thus, for the one measure the State identified as constituting an MSM, the measure is not currently implemented as required to meet the MSM requirement. In addition, in accordance with 40 CFR 51.1014(b)(1), contingency measures cannot consist of a measure required or relied upon as part of the control strategy.<sup>11</sup>

The submitted Fairbanks Serious SIP Submission does not demonstrate that the State has identified, adopted, and implemented MSMs for reducing direct PM<sub>2.5</sub> and PM<sub>2.5</sub> plan precursors. Additionally, the State's attainment date extension request also does not comply with the explicit timing requirements and limitations of 40 CFR 51.1004(a)(2)(ii) or with those of CAA section 188(e). For these reasons, the EPA is proposing to deny the State's request to extend the Serious

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<sup>8</sup> State Air Quality Control Plan Volume II: III.D.7.7. The EPA is not proposing action on the control strategy element of the Fairbanks Serious SIP Submission. Therefore, nothing in this proposed action shall be construed as a determination regarding whether the Fairbanks Serious SIP Submission includes control measures that meet the CAA and regulatory requirements.

<sup>9</sup> State Air Quality Control Plan Volume II: III.D.7.7-33.

<sup>10</sup> Alaska Administrative Code, Title 18, Section 50.077(n).

<sup>11</sup> The EPA is not proposing action on the contingency measure element of the Fairbanks Serious SIP Submission. Therefore, nothing in this proposed action shall be construed as a determination regarding whether the Fairbanks Serious SIP Submission includes contingency measures that meet the CAA and regulatory requirements.

area attainment date applicable to the Fairbanks PM<sub>2.5</sub> Nonattainment Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS because the State's SIP submission does not meet all applicable statutory and regulatory requirements.

## **V. Summary of Proposed Action**

In this action, the EPA is proposing to determine that the Fairbanks PM<sub>2.5</sub> Serious Nonattainment Area failed to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS by the applicable attainment date of December 31, 2019. The EPA is also proposing to deny Alaska's request for an extension of the Serious nonattainment date because the statutory conditions for granting an extension are not met. The EPA is taking comment on these two proposed actions.

If the EPA finalizes this action, the State will then be required to make a SIP submission pursuant to CAA section 189(d) to the EPA by December 31, 2020. In accordance with CAA sections 172(a)(2) and 179(d)(3) and 40 CFR 51.1004(a)(3), the attainment date for a Serious PM<sub>2.5</sub> nonattainment area that failed to attain the PM<sub>2.5</sub> NAAQS by the applicable Serious area attainment date presumptively shall be as expeditious as practicable, but no later than five years following the effective date of the EPA's finding that the area failed to attain by the original Serious area attainment date. However, the EPA may extend the attainment date to the extent the EPA deems appropriate, for a period no greater than 10 years from the effective date of the EPA's determination that the area failed to attain, considering the severity of nonattainment and the availability and feasibility of pollution control measures in the area.

## **VI. Statutory and Executive Order Reviews**

This proposed action establishes no new requirements; it merely documents that air quality in the Fairbanks PM<sub>2.5</sub> Nonattainment Area did not meet the 2006 PM<sub>2.5</sub> standards by the CAA deadline. 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 this action does not involve technical standards; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP obligations discussed herein do not 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. This proposed action 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, Carbon monoxide, 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: April 30, 2020.

Christopher Hladick,  
Regional Administrator,  
Region 10.

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