ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2022-0893; FRL-10419-01-R10]

Air Plan Approval; AK; Revisions to Ice Fog and Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Alaska State Implementation Plan (SIP) submitted on May 16, 2022. In the submission, Alaska revised and repealed state regulations originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska. Alaska determined that the regulations are now obsolete due to technology improvements and regulatory changes, including Federal sulfur content in fuel restrictions, and Alaska requested that the SIP be updated to reflect the revised and repealed state regulations. We propose to find that the submitted revision will not interfere with attainment of the national ambient air quality standards or other applicable requirements of the Clean Air Act.

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-2022-0893, 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, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or hall.kristin@epa.gov.

SUPPLEMENTARY INFORMATION: In this document, "we" and "our" mean the EPA.

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I. Background

Each state has a State Implementation Plan (SIP) containing the air pollution control measures and strategies used to meet the national ambient air quality standards. These standards are established by the EPA for the criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide (SO_2). The SIP contains elements such as emission limits, pollution control technology requirements, monitoring networks, and enforcement mechanisms, among other elements. The SIP is a living compilation revised by the state over time to address changing air quality conditions.

As the primary government entity charged with controlling air pollution in the state, the Alaska Department of Environmental Conservation (DEC) generally establishes state air regulations in the Alaska Administrative Code, Title 18, Chapter 50 (18 AAC 50). The Alaska DEC then submits state regulations to the EPA for review and approval. Through notice and

comment rulemaking, the EPA approves and incorporates the state regulations by reference into the Alaska SIP in the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart C. As part of the SIP, the state regulations are enforceable by the EPA, and by citizens in Federal district court.[1]

II. Evaluation of Submission

On May 16, 2022, Alaska submitted a SIP revision to the EPA. In the submission, the state revised and repealed certain air quality regulations and requested to update the federally approved SIP.[2] Alaska determined that the regulations, originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska are now obsolete due to technology improvements and regulatory changes. Alaska requested that the SIP be updated to reflect the revised and repealed state regulations. Alaska provided background and supporting information in the submission. We have included the full submission in the docket for this action. The following paragraphs of this preamble summarize our evaluation.

A. Ice Fog Provisions

Ice fog is made up of tiny ice crystals that form in the air under extremely cold conditions. The original 1972 Alaska SIP included a chapter on ice fog because, at the time, water vapor from cooling ponds, industrial processes, motor vehicles and other sources contributed to regular ice fog events that caused dangerous road conditions and other public safety hazards. The original Alaska SIP also included a regulation[3] to address industrial sources of water vapor emissions. The regulation, currently codified at 18 AAC 50.080, stated that the Alaska DEC may require a person who proposes to build or operate an industrial process, fuel-burning equipment, or incinerator in an area of potential ice fog to obtain a permit and to reduce

[1] See citizen suit provision at Clean Air Act section 304.

[2] The submission also updated the state's adoption by reference of Federal air quality standards and test methods codified at 18 AAC 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

[3] 18 AAC 50.090, state effective May 26, 1972. We note that this regulation was renumbered from 18 AAC 50.090 to 18 AAC 50.080, state effective January 18, 1997.

water vapor emissions.

The Alaska DEC determined that the ice fog chapter and regulation are no longer needed. The submission, included in the docket for this action, stated that, in the 50 years since establishing the ice fog provisions, improved technologies have reduced water vapor emissions from industrial processes and equipment. The submission further stated that ice fog prevention measures are required in only a handful of permits issued to older industrial turbines in interior Alaska that use water injection as a nitrogen oxide control measure. To address these limited situations, the Alaska DEC retains authority under a separate regulation, 18 AAC 50.110,[4] to limit water vapor emissions and prevent ice fog events.

The EPA may approve a state's request to revise or remove a provision from the federally approved SIP as long as the SIP revision would not interfere with any applicable requirement concerning attainment of the national ambient air quality standards, reasonable further progress toward achieving those standards, or other applicable requirements of the Clean Air Act. We have reviewed the submission and propose to approve the request to remove the ice fog chapter and regulation from the SIP for two reasons. First, we propose to find that the ice fog regulation at 18 AAC 50.090 is redundant. The submission stated that the Alaska DEC may employ a different SIP-approved regulation, 18 AAC 50.110, to prevent ice fog events. Second, the ice fog chapter and regulation address water vapor emissions. Water vapor is not a criteria pollutant, precursor to a criteria pollutant, or an additional pollutant required to be regulated under the SIP and Clean Air Act section 110 and part C of title I. Removal of this water vapor provision will not impact air pollution control requirements for the control of criteria pollutants. Therefore, we propose to find that removing the ice fog chapter and regulation from the SIP will not interfere with any applicable requirement concerning attainment of the national ambient air quality standards, reasonable further progress toward achieving those standards, or other applicable

[4] 18 AAC 50.110 prohibits any emission injurious to health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property. It is also part of the federally approved Alaska SIP.

requirements of the Clean Air Act.

B. Sulfur Dioxide Provisions

In 1997, Alaska established two SO_2 special protection areas around the island fishing communities of Unalaska and St. Paul Island.[5] The submission, included in the docket for this action, stated that marine vessels and on-shore industrial facilities in these areas historically burned large quantities of high-sulfur fuel oil, as high as 50,000 parts per million (ppm) sulfur content, or 5% sulfur by weight. International treaty governs the sulfur content of commercial marine fuel and, at the time Alaska established the SO_2 special protection areas, allowed for the widespread burning of high-sulfur fuel oil known as bunker fuel.

Lacking the authority to limit the sulfur content of commercial marine fuel burned by vessels transiting near Alaska, the Alaska DEC established SO_2 special protection areas around Unalaska and St. Paul Island. Within these special protection areas, Alaska imposed additional minor source permitting requirements on certain sources. Specifically, the Alaska DEC required each emissions unit with a rated capacity of 10 million British thermal units (BTUs) or more per hour to obtain a minor source permit prior to beginning actual construction.[6] This requirement was in addition to the current state-wide requirement for each new stationary source with the potential to emit (PTE) SO_2 greater than 40 tons per year to obtain a minor source permit prior to beginning actual construction.[7]

Additionally, each applicant for a minor source permit in a special protection area was required to provide a demonstration that the proposed potential SO_2 emissions from the stationary source would not result in a violation of the state-adopted SO_2 national ambient air

[5] Unalaska, population 4,254, is the largest community in the Aleutian Islands chain. It is home to Dutch Harbor, main port to the Bering Sea fishery. St. Paul Island, population 413, is the largest of the Pribilof Islands, approximately 300 miles off the mainland in the Bering Sea. Both communities are located in the Aleutians West Census Area. See U.S. Census Bureau Data for Alaska, 2020. Available at https://live.laborstats.alaska.gov/cen/hist.html. See also Aleutians West Census Area map at https://live.laborstats.alaska.gov/cen/maps/bor/current/016.pdf.

[6] Previously 18 AAC 50.502(c)(2)(B).

[7] 18 AAC 50.502(c)(1)(C).

quality standard (NAAQS).[8] Finally, each source proposed to be constructed in a special protection area was ineligible for the Alaska DEC's streamlined minor source permitting process. This SIP-approved process provides the public with notice and an opportunity to request a public comment period, however, if no member of the public makes such a request, a full comment period is not held.[9]

Since 1997, there have been significant restrictions on sulfur in marine fuel. In 2010, the International Marine Organization (IMO) established emission standards for vessels operating in designated waters off the coast of North America.[10] The North American Emissions Control Area (ECA) covers most coastal areas of the United States, including southeast Alaska and the Gulf of Alaska. Vessels operating in the area must burn low sulfur marine fuel, 1,000 ppm sulfur content (0.10% sulfur by weight). Notably, the North American ECA does not extend to Unalaska and St. Paul Island, however, as of January 1, 2020, the IMO limited sulfur in fuel for ships operating outside designated ECAs to 5,000 ppm sulfur content (0.50% sulfur by weight).[11] This limit represents a substantial reduction from the prior IMO limit of 35,000 ppm sulfur content (3.5% sulfur by weight).

As stated in the submission, the Alaska DEC's assessment is that most vessels transiting shipping routes near Unalaska and St. Paul Island are now burning 5,000 ppm sulfur content fuel or less, an estimated seven-fold decrease from the prior IMO limit of 35,000 ppm sulfur content fuel. Therefore, any associated emissions increase due to removal of the SO_2 special protection area permit process requirements would be more than offset by the reduction in SO_2 emissions from this change in the Federal sulfur content of fuel standards. The submission requested to remove the rule denoting the two sulfur dioxide special protection areas, 18 AAC 50.025(c), and

[8] Previously 18 AAC 50.540(c)(2)(C). This requirement was in addition to the requirement that all applications include a demonstration that the proposed source will not interfere with attainment or maintenance of the NAAQS for each air pollutant for which the source's PTE exceeded the minor source permitting threshold in 18 AAC 50.502(c)(1), (3) or (4). The latter requirement remains a part of Alaska's SIP.

[9] See 18 AAC 50.542.

[10] MARPOL Annex VI is codified at 33 USC 1901 *et seq*. Pursuant to 33 USC 1907 it is unlawful to act in violation of the MARPOL Protocol.

[11] Fuel sulfur limits are codified at 40 CFR part 1043. See 84 FR 69335, 69336 (Dec. 18, 2019).

associated cross-references to minor stationary source permitting rules, from the Alaska SIP.[12]

The EPA may approve a state's request to revise or remove a provision from the federally approved SIP as long as the SIP revision would not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress toward achieving those standards, or other applicable requirements of the Clean Air Act.[13] We propose to approve the submitted changes for the following reasons. First, existing Federal sulfur content of fuel standards are adequate substitutes for the additional minor source permitting requirements in the SO_2 special protection areas because the existing Federal standards will achieve equivalent or greater emissions reductions. The National Emissions Inventory (NEI) data presented in Table 1 of this preamble confirms that the commercial marine vessel sector is the largest sulfur dioxide-emitting sector in the census area that encompasses Unalaska and St. Paul Island.

Second, the data in Table 1 of this preamble suggests that sulfur dioxide emissions from industrial fuel combustion in the census area is low. It is reasonable to conclude that the EPA's regulations limiting the sulfur content of marine diesel will greatly reduce emissions from the largest source of SO_2 pollution.[14] Alaska does not rely on these emission reductions for credit towards attainment, maintenance, or reasonable further progress purposes in this geographic area. We note, however, that it is difficult to evaluate NEI data for potential trends from year to year because the protocols for estimating emissions change over time. For example, between 2014 and 2017, the EPA significantly changed its protocol for estimating marine vessel emissions and as a result, commercial marine vessel emissions data for 2017 is not directly comparable to prior years.[15]

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[12] The rules that cross reference 18 AAC 50.025(c) are part of the minor source permitting program in Article 5 of 18 AAC 50, specifically: 18 AAC 50.502(c)(2)(B), 18 AAC 50.540(c)(2)(C), and 18 AAC 50.542(a)(1)(B).

[13] Clean Air Act section 110(*l*), 42 USC 7410(*l*).

[14] See 84 FR 69335, 69336 (Dec. 18, 2019). 40 CFR 1043.60(b).

[15] See the EPA 2017 NEI technical support document at https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.

Table 1. Sulfur Dioxide Emissions in Aleutians West Census Area (tons per year)[16]

Sector[17]	2008	2011	2014	2017
Fuel Comb - Comm/Institutional - Oil	4	4	3	1
Fuel Comb - Comm/Institutional - Other	0	1	1	0
Fuel Comb - Electric Generation - Oil	51	15	11	15
Fuel Comb - Industrial Boilers, ICEs - Coal	0	0	0	1
Fuel Comb - Industrial Boilers, ICEs - Natural Gas	0	0	0	1
Fuel Comb - Industrial Boilers, ICEs - Oil	36	14	1	1
Fuel Comb - Industrial Boilers, ICEs - Other	1	0	0	0
Fuel Comb - Residential - Oil	24	17	12	0
Fuel Comb - Residential - Other	0	1	0	0
Fuel Comb - Residential - Wood	0	0	0	1
Industrial Processes - Not Elsewhere Classified	2	0	0	0
Mobile - Aircraft	1	1	3	3
Mobile - Commercial Marine Vessels	41	116	71	1119[18]
Mobile - Non-Road Equipment Diesel	7	1	0	0
Mobile - On-Road Diesel Heavy Duty Vehicles	2	0	0	0
Mobile - On-Road non-Diesel Light Duty Vehicles	2	0	0	0
Total	171	170	102	1142

In addition, from 2007 through 2014, the EPA phased in ultra-low sulfur diesel fuel standards. After 2014, the EPA mandated that all nonroad locomotive and marine diesel fuel sold in the United States must be ultra-low sulfur diesel and all nonroad, locomotive, and marine engines and equipment in the United States must use this fuel.

Lastly, Alaska's existing major and minor source permitting programs will continue to enable the Alaska DEC to manage the construction of new sources to ensure attainment and maintenance of the NAAQS. New major stationary sources are subject to Alaska's SIP-approved major new source review and prevention of significant deterioration program.[19] In 2010, the EPA established a new, more stringent 1-hour sulfur dioxide NAAQS.[20] Alaska adopted the standard into the state air plan and therefore new and modified minor industrial sources may not construct

[16] Source: The EPA NEI website, downloaded November 14, 2022. Available at https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei. 2020 NEI data not released as of the EPA's data pull.

[17] This table includes sectors with reported emissions greater than zero tons per year for at least one NEI year between 2008 and 2017. For background on sectors, see page 2-1 of the EPA 2017 NEI technical support document at https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.

[18] NEI marine vessel emissions data for 2017 are not directly comparable to prior years because the EPA changed its protocol for estimating marine vessel emissions. See the EPA 2017 NEI technical support document at https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.

[19] 18 AAC 50 Article 3. 18 AAC 50.040(h).

[20] The 2010 1-hour sulfur dioxide NAAQS is codified at 40 CFR 50.17.

if it would interfere with attainment or maintenance of the 2010 SO_2 1-hour NAAQS, per 18 AAC 50.045 and 18 AAC 50.542.

In addition, all new minor stationary sources with SO_2 PTE greater than 40 tons per year must obtain a permit prior to beginning actual construction.[21] Similarly, portable oil and gas operations must obtain a minor source permit prior to beginning actual construction or relocation.[22] Permit applicants for minor sources in the former SO_2 special protection areas are required to include a demonstration that the proposed source will not interfere with attainment or maintenance of the NAAQS for each air pollutant for which the source's PTE exceeds the minor source permitting threshold in 18 AAC 50.502(c)(1), (3) or (4).[23] Finally, minor stationary sources are eligible for Alaska's fast track permitting procedures only if the source's predicted ambient air concentration does not exceed 80 percent of the adopted SO_2 NAAQS based on a screening analysis.[24]

In general, SIP changes of this nature must be evaluated for potential impacts on other criteria pollutants and associated NAAQS. However, this submitted change to the Alaska SIP addresses a provision that is limited to changes in potential SO_2 emissions only. As specified in the SIP-approved Alaska minor source permitting regulations at 18 AAC 50.540(c)(2), any modeling required to comply with the SO_2 special protection area provision in question would have been required to address potential changes in SO_2 emissions only. Therefore, we have not extended our non-interference analysis to other criteria pollutants and NAAQS. We propose to find that the repeal of the sulfur dioxide special protection areas will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Clean Air Act.

III. Proposed Action

[21] 18 AAC 50.502(c)(1)(C).
[22] 18 AAC 50.502(c)(2).
[23] 18 AAC 50.540(c)(2)(C).
[24] 18 AAC 50.542(b)(4).

The EPA is proposing to approve and incorporate by reference the ice fog and SO_2 related regulatory changes submitted by Alaska on May 16, 2022.[25] If finalized, the Alaska SIP will include the following regulations, state effective April 16, 2022:

• 18 AAC 50.025 Visibility and other special protection areas (establishing geographic areas that may need additional pollution control because of special circumstances);

• 18 AAC 50.502 Minor permits for air quality protection (establishing which types of stationary sources must obtain minor construction and/or operating permits);

• 18 AAC 50.540 Minor permit: application (outlining the required contents of an application for a minor construction and/or operating permit); and

• 18 AAC 50.542 Minor permit: review and issuance (establishing the process the state uses to review permit applications from sources, conduct public notice and comment, and issue permits).

The EPA is also proposing to approve Alaska's request to remove the following regulation from incorporation by reference:

• 18 AAC 50.080 Ice fog, state effective January 18, 1997 (regulating water vapor emissions from industrial sources that may form ice fog).

IV. Environmental Justice Considerations

To provide additional context and information to the public on potential environmental burdens and susceptible populations in underserved communities in the Unalaska and St. Paul Island areas, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool, EJSCREEN.[26] We note, however, that this screening analysis does not serve as a basis for this proposed action. As detailed in section II. of this preamble, the EPA's proposed action is based on its determination that the SIP revisions submitted by the

[25] The submission also updated the state's adoption by reference of Federal air quality standards and test methods at 18 AAC 50.035 and 18 AAC 50.040. We are addressing these adoption updates in a separate action.

[26] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at https://www.epa.gov/ejscreen/what-ejscreen.

Alaska DEC meet Clean Air Act requirements.

EJSCREEN includes 12 EJ indices, each of which combines demographic factors with a single environmental factor.[27] EJSCREEN also includes a demographic index that combines low income, race and ethnicity data for an area.[28] Additionally, there are individual socioeconomic and health indicators in EJSCREEN: unemployment; less than high school education; limited English speaking; low life expectancy; under age 5; over age 64; asthma; and medically underserved. [29]

We ran EJSCREEN reports for the Unalaska and St. Paul Island areas and placed the reports in the docket for this action. The results of these analyses, described in the following paragraphs, are being provided for informational and transparency purposes, only. There are important caveats and uncertainties that apply to these reports and this screening-level information. Please see the EJSCREEN technical documentation for more discussion on the limitations of this information.[30] We note that four of the EJ indices are not available for the geographic areas addressed in this action (Unalaska and St. Paul Island) and therefore, we

[27] The 12 EJ indices in EJSCREEN are: fine particulate matter (annual average of fine particulate matter in ambient air); ozone (summer seasonal ozone averages); diesel particulate matter (diesel particulate matter level in air); air toxics cancer risk (lifetime cancer risk of inhalation of air toxics); air toxics respiratory hazard index; traffic proximity (count of vehicles per day at major roads divided by distance); lead paint (housing built before 1960, as index of potential exposure to lead paint); superfund proximity (count of proposed and listed Superfund national priority list sites divided by distance); risk management plan facility proximity (count of risk management plan facilities divided by distance); hazardous waste proximity (count of waste transfer, storage and disposal facilities and large quantity generators divided by distance); underground storage tanks (count of leaking underground storage tanks and tanks within a buffered block group); wastewater discharge (risk screening environmental indicators modeled toxic concentrations at stream segments divided by distance).

[28] The demographic index in EJSCREEN combines the average of the number of individuals whose household income is less than twice the poverty level and the number of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.

[29] The unemployment indicator is based on the number of individuals who did not have a job at all during the reporting period made at least one specific active effort to find a job during the prior 4 weeks, and were available for work (unless temporarily ill). The less than high school education indicator is based on the number of individuals age 25 and older with less than a high school degree. The limited English speaking indicator is based on the percent of households in which all members age 14 years and over speak a non-English language and also speak English less than 'very well'. The low life expectancy indicator is based on the average life expectancy ranked as percentiles. The under age 5 indicator is based on the percent of individuals under age 5. The over age 64 indicator is based on the percent of individuals over age 64. The asthma indicator is based on the percent of individuals with asthma. The medically underserved indicator is based on areas designated as have too few primary care providers, high infant mortality, high poverty or a high elderly population.

[30] U.S. Environmental Protection Agency (EPA), 2022. EJSCREEN Technical Documentation.

reviewed the eight remaining EJ indices.[31]

The EPA has determined that the use of an initial data filter in EJSCREEN promotes consistency and provides a pragmatic first step for EPA programs and regions when interpreting screening results. For early applications of EJSCREEN, the EPA has identified the 80th percentile filter as that initial starting point. For more information on percentiles, please see the EJSCREEN technical documentation.[32] For the Unalaska area, there are two EJ indices above the 80th percentile: lead paint (90th state percentile); and risk management plan facility proximity (92nd state percentile and 84th U.S. percentile). The demographic index for Unalaska is also at the 80th state percentile. Most of Alaska, including Unalaska and St. Paul Island, is considered medically underserved.[33] For the St. Paul Island area, there are three EJ indices above the 80th percentile: lead paint (92nd state percentile); superfund proximity (94th state percentile and 86th U.S. percentile); and risk management plan facility proximity (91st state percentile and 80th U.S. percentile). The demographic index for St. Paul Island is also above the 80th percentile (86th state percentile and 79th U.S. percentile). Other indicators above the 80th percentile for St. Paul Island include: people of color (87th state percentile and 81st U.S. percentile); and limited English speaking (86th state percentile).

The Clean Air Act requires action on this Alaska SIP submission, including the submitted regulatory changes related to sulfur dioxide emissions. The EPA expects that any changes in emissions resulting from this action will be neutral or reduced. Additionally, the EPA expects that this proposed action will contribute to neutral or reduced environmental and health impacts on all populations in Unalaska and St. Paul Island, including people of color and lower income populations. At a minimum, this action is not expected to worsen existing air quality nor

[31] The four EJ indices not available for Unalaska and St. Paul Island are: fine particulate matter, ozone, traffic proximity, and wastewater discharge. The eight EJ indices available for Unalaska and St. Paul Island are: diesel particulate matter, air toxics cancer risk, air toxics respiratory hazard index, lead paint, superfund proximity, risk management plan facility proximity, hazardous waste proximity, and underground storage tanks.

[32] U.S. Environmental Protection Agency (EPA), 2022. EJSCREEN Technical Documentation.

[33] The medically underserved indicator is based on areas designated as having too few primary care providers, high infant mortality, high poverty or a high elderly population.

contribute to potential violations of the SO_2 NAAQS. More information on sulfur dioxide and its relationship to negative health impacts can be found at https://www.epa.gov/so2-pollution.

V. Tribal Consultation

The Qawalangin Tribe of Unalaska is located in the Unalaska area and the Pribilof Islands Aleut Community of St. Paul is located on the Island of St. Paul. Consistent with EPA policy, the EPA offered the Qawalangin Tribe of Unalaska and the Aleut Community of St. Paul Island the opportunity to consult on a government to government basis prior to this proposed action in letters dated March 14, 2023. We received no consultation or coordination requests prior to this proposed action.

VI. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III. of this preamble. The EPA is also proposing to remove from incorporation by reference 18 AAC 50.080 Ice fog (regulating water vapor emissions that may form ice fog), state effective January 18, 1997.

The EPA has made, and will continue to make, these documents generally available through https://www.regulations.gov and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air act. 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 (Pub. L. 104-4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of

environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described in section IV. of this preamble titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. This action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This proposed rulemaking would 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. In those areas of Indian country, the proposed rulemaking does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided an opportunity to request consultation. Please see section V. of this preamble titled, "Tribal Consultation."

List of Subjects in 40 CFR Part 52

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

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

Dated: May 17, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.

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