

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket: EPA-R10-OAR-2011-0916; FRL-9910-43-Region 10]

### Approval and Promulgation of Implementation Plans; Alaska

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Alaska State Implementation Plan (SIP). Alaska submitted these revisions on February 13, 2008, December 11, 2009, April 14, 2010, November 29, 2010, October 21, 2011, December 10, 2012, and January 28, 2013, to meet Clean Air Act (CAA) requirements. These revisions update the Alaska SIP to reflect changes to the National Ambient Air Quality Standards (NAAQS), area designations, and Federal permitting requirements. In addition, the submitted changes revise and clarify Alaska permitting rules, and remove provisions that are duplicated in other regulations. Although the EPA is proposing to approve most of the submitted revisions, the EPA is proposing to not approve certain provisions which are inappropriate for SIP approval. The EPA is also removing specific provisions from the Alaska SIP that were previously approved, but that implement other provisions of the CAA and that the State has not relied on to demonstrate attainment or maintenance of the NAAQS or to meet other specific requirements of section 110 of the CAA, and therefore should not be part of the Federally-approved Alaska SIP. Finally, the EPA is deferring action on certain portions of the submissions, including those that adopt by reference updates to the Federal nonattainment major new source review requirements, because those revisions will be addressed in a separate action.

**DATES:** Comments must be received on or before June 4, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0916, by any of the following methods:

A. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

B. *Email*: R10-Public\_Comments@epa.gov.

C. *Mail*: Donna Deneen, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

D. *Hand Delivery*: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-2011-0916. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

### FOR FURTHER INFORMATION CONTACT:

Donna Deneen at (206) 553-6706, *deneen.donna@epa.gov*, or by using the above EPA, Region 10 address.

### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us" or "our" is used, it is intended to refer to the EPA.

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## I. Background

The EPA last approved major revisions to the State of Alaska air quality regulations at Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50) on August 14, 2007 (72 FR 45378) (“2007 action”). More recently, the Alaska Department of Environmental Conservation (ADEC) submitted rule revisions to the EPA on February 13, 2008, December 11, 2009, April 14, 2010, November 29, 2010, October 21, 2011, December 10, 2012, and January 28, 2013. These submissions include revisions to update the Alaska SIP for changes to the NAAQS, area designations, and Federal permitting requirements, in addition to changes and clarifications to Alaska permitting rules, and removal of provisions that are duplicated in other regulations.

In this action, we are proposing to approve the rule changes submitted by Alaska, with certain exceptions described below. We are also removing specific provisions from the Alaska SIP that were previously approved by the EPA, but implement other requirements of the CAA and that the State has not relied on to demonstrate attainment or maintenance of the NAAQS or to meet other specific requirements of section 110 of the CAA, and therefore should not be part of the Federally-approved Alaska SIP. In addition, we are deferring action on certain portions of the submissions, including those adopting by reference updates to the Federal nonattainment major new source review (nonattainment NSR) permitting requirements at 40 CFR 51.165, as discussed in paragraph F below. We intend to address them in a separate action.

Below is a summary of our evaluation of the submitted revisions to the Alaska SIP. For a more detailed discussion of the revisions, our analysis and proposed action, please see the technical support document (TSD) in the docket for this action. Please note that this action does not address portions of these Alaska submissions which we previously approved on February 9, 2011 (76 FR 7116), October 22, 2012 (77 FR 64425), February 14, 2013 (78 FR 10546), and May 9, 2013 (78 FR 27071). In addition, our analysis in this proposed action discusses only the most recently submitted amendment to any particular provision. We describe how the submitted Alaska rules differ from the Federally-approved Alaska SIP, and why the EPA believes the changes are approvable.

## II. Evaluation of Submittals

### A. Ambient Air Quality Standards

The revisions submitted by Alaska update the State’s ambient air quality standards at 18 AAC 50.010 “Ambient Air Quality Standards” to reflect the 2006 fine particulate matter (PM<sub>2.5</sub>), 2008 lead (Pb), 2010 sulfur dioxide (SO<sub>2</sub>), and 2010 nitrogen dioxide (NO<sub>2</sub>) NAAQS.<sup>1</sup> Because the submitted revisions are consistent with the Federal NAAQS promulgated under the CAA, we are proposing to approve 18 AAC 50.010 “Ambient Air Quality Standards,” except paragraphs (7) and (8), which set State ambient air quality standards for reduced sulfur compounds and ammonia respectively. Consistent with our 2007 action, we are proposing to not approve paragraphs (7) and (8) because they establish State ambient air quality standards for reduced sulfur compounds and ammonia, and they are not NAAQS established under section 109 of the CAA (72 FR 45378).

### B. Air Quality Designations, Classifications and Control Regions

The submitted revisions add subparagraph (b)(3) to 18 AAC 50.015 “Air Quality Designations, Classification and Control Regions” to identify the PM<sub>2.5</sub> nonattainment area for the Fairbanks and North Pole urban area, in addition to an editor’s note to clarify that nonattainment and maintenance areas, air quality control regions, and the Class I area boundaries can be found in the Alaska Air Quality Control Plan and 40 CFR Part 81. We are proposing to approve these revisions, which update the Alaska SIP to include the most recently designated nonattainment area in Alaska.

### C. Baseline Dates and Maximum Allowable Increases

The submissions revise 18 AAC 50.020 “Baseline Dates and Maximum Allowable Increases” to clarify minor source baseline dates and maximum allowable increases, including adding PM<sub>2.5</sub> to the tables in the rule. Specifically, the revisions clarify that baseline dates will be determined using the already-established Federal definition for minor source baseline dates, that concentrations above the ambient air quality standard are prohibited, and that baseline concentrations will be determined using already-established Federal provisions. The submitted revisions are consistent with the CAA and implementing

<sup>1</sup> We note that on October 22, 2012, we approved the State’s revision to this rule to align Alaska’s ozone ambient air quality standard with the 2008 ozone NAAQS (77 FR 64425).

provisions in 40 CFR part 52 and 81 and therefore we are proposing to approve the revisions.

### D. State Air Quality Control Plan

As a matter of State law, 18 AAC 50.030 “State Air Quality Control Plan” adopts by reference Volumes II and III of the State Air Quality Control Plan and other documents. The submissions addressed in this action revise the appendices to the Air Quality Control Program (Volume III, 18 AAC 50 Air Quality Control) by amending 18 AAC 50.030. We are proposing to not approve the submitted revisions to 18 AAC 50.030 because the referenced documents that form the basis for the submissions are being individually approved in this action. We are only proposing to approve those provisions specifically identified in the submissions and addressed in this action. The EPA takes action directly, as appropriate, on the specific provisions in the State Air Quality Control Plan that have been submitted by Alaska, so it is unnecessary for the EPA to approve 18 AAC 50.030.

### E. Documents, Procedures and Methods Adopted by Reference

18 AAC 50.035 “Documents, Procedures, and Methods Adopted by Reference” adopts by reference the Alaska in situ burning guidelines, various Federal monitoring and modeling requirements and guidance, State “Title V Application Forms,” Federal reference and interpretation methods, and standard test methods. Except for the adoption by reference of the State “Title V Standard Application and Forms,” we are proposing to approve the submitted revisions to this provision because the changes update the Alaska SIP for the latest versions of specific documents, and add several new Federal reference and interpretation methods required to implement revised NAAQS. The State “Title V Standard Application and Forms” are inappropriate for SIP approval because they are not a requirement under section 110 of title I of the CAA, but rather are a requirement of title V of the CAA.

We note that, consistent with our 2007 action, we are proposing to not approve 18 AAC 50.035(b)(4), which specifies test methods related to 40 CFR part 63 (72 FR 45378). This provision is inappropriate for SIP approval because it relates to requirements that are not in the SIP and implement other requirements of the CAA.

### F. Federal Standards Adopted by Reference

The submissions update the most recent Federal regulation references in 18 AAC 50.040 “Federal Standards Adopted by Reference.” In addition, the submissions add a new paragraph (k) to 18 AAC 50.040 to adopt by reference the provisions of 40 CFR part 64, to the extent they apply to title V sources. Paragraph (k) of 18 AAC 50.050 implements the requirements of 40 CFR parts 64 and 71, and not the requirements of section 110 of the CAA. In the absence of a specific request from Alaska that this provision be included in the SIP, we are proposing to not approve this provision.

### Provisions Implementing Other Requirements of the CAA

The submissions revise paragraphs (a), (b), (c), (d), (e), (g), and (j) of 18 AAC 50.040 to update the adoption by reference of emissions standards for 40 CFR parts 60, 61, 62, 63, 70, and 82 sources. In addition, the submissions add a new paragraph (k) to adopt by reference the provisions of 40 CFR part 64 to the extent they apply to title V sources.

These types of provisions are inappropriate for SIP approval because they implement other requirements of the CAA, and the State is not relying on them to demonstrate attainment or maintenance of the NAAQS or to meet other requirements of section 110 of the CAA. We are proposing to not approve the addition of subparagraph (j)(9), relating to 40 CFR part 71 “Operating Permits,” for the same reason.

### PSD

The submissions revise paragraph (h) of 18 AAC 50.040 to adopt by reference specific provisions of the Federal PSD regulations set forth at 40 CFR 51.166 and 40 CFR 52.21 as of July 1, 2011, to implement the Alaska PSD permitting program. However, the submitted revisions adopting by reference 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) have been impacted by a recent court decision vacating portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule (October 20, 2010, 75 FR 64864).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued, with respect to the SMC, a judgment that, *inter alia*, vacated the provisions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule adding the PM<sub>2.5</sub> SMC to the Federal regulations at

51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Thus, although the PM<sub>2.5</sub> SMC was not a required element of a state’s PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM<sub>2.5</sub> monitoring data, such application of the vacated SMC would be inconsistent with the Court’s opinion and the requirements of section 165(e)(2) of the CAA.

At the EPA’s request, the decision also vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub>, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. In addition, the Court decision does not affect the PSD increments for PM<sub>2.5</sub> promulgated as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule.

We note that the EPA recently amended its regulations to remove the vacated PM<sub>2.5</sub> SILs and SMC provisions from PSD regulations on December 9, 2013 (78 FR 73698). In addition, the EPA will initiate a separate rulemaking in the future regarding the PM<sub>2.5</sub> SILs that will address the Court’s remand. In the meantime, we are advising states to begin preparations to remove the vacated provisions from state PSD regulations.

Consistent with the vacatur of the EPA regulations as they relate to the PM<sub>2.5</sub> SMC and the PM<sub>2.5</sub> SIL, and the EPA’s December 9, 2013, rulemaking, Alaska has submitted a letter dated February 12, 2014, withdrawing the adoption by reference of 40 CFR 52.21 as it relates to the vacated PM<sub>2.5</sub> SMC and SIL at subparagraphs 18 AAC 50.040(h)(7) and (9). A copy of Alaska’s letter is in the docket for this action. Although these provisions remain in effect as a matter of State law, Alaska has confirmed that it will not apply either the PM<sub>2.5</sub> SMC provisions at 40 CFR 51.166(i)(5)(i)(c) and 52.21

(i)(5)(i)(c), or the PM<sub>2.5</sub> SIL provisions at 40 CFR 51.166(k)(2) and 52.21(k)(2) in implementing the State PSD program. In addition, the letter states that Alaska intends to remove the vacated provisions to ensure consistency with Federal law.

The submissions also add subparagraph (21) to 18 AAC 50.040(h) to adopt by reference 40 CFR 52.22 “Enforceable Commitments for Further Actions Addressing the Pollutant Greenhouse Gases (GHGs).” This provision is inappropriate for SIP approval because it is related to a Federal commitment that is not applicable to the State. Therefore, we are proposing to not approve the addition of subparagraph (21).

In summary, we are proposing to approve the revisions to 18 AAC 50.040(h) except for subparagraph (21). We are taking no action on subparagraphs (7) and (9) because these provisions were withdrawn.

### Nonattainment NSR

The submitted revisions to paragraph (i) of 18 AAC 50.040 update the adoption by reference of Federal provisions at 40 CFR 51.165 “Permit Requirements.” These provisions govern the permitting of new major sources and major modifications in nonattainment areas. On February 12, 2014, Alaska submitted a letter to the EPA explaining that the Alaska regulations submitted for approval adopt by reference the “regulated NSR pollutant” definition found in the Federal PSD permitting regulations at 40 CFR 52.21(b)(50), rather than the definition in the Federal nonattainment NSR regulations 40 CFR 51.165(a)(1)(xxxvii). In the letter, Alaska stated that it intends to propose revisions to the appropriate sections of 18 AAC 50 to adopt by reference the “regulated NSR pollutant” definition at 40 CFR 51.165(a)(1)(xxxvii) for purposes of nonattainment NSR permitting, and to begin the public notice and comment process at the first opportunity. The EPA understands the State has already commenced a rulemaking to revise the definition of regulated NSR pollutant. In light of the commencement of that rulemaking, we are taking no action on Alaska’s revisions to 18 AAC 50.040(i) at this time, but will address the revisions at a later date. We are deferring action on the revisions to 18 AAC 50.040(i) to give Alaska the opportunity to revise its definition of “regulated NSR pollutant” for nonattainment areas in 18 AAC 50.040(i)(1)(B)(i).

### G. Industrial Processes and Fuel-Burning Equipment

In subparagraph (a)(9)(D) of 18 AAC 50.055 “Industrial Processes and Fuel-Burning Equipment,” the term “facility” was replaced by the more specific term “stationary source.” We are proposing to approve this revision because it clarifies that a Federally-approved source-specific SIP revision is necessary to change the applicable opacity limit at a stationary source located at a facility. In addition, consistent with our 2007 action, we are proposing to not approve subparagraph (d)(2)(B), which contains emissions standards for hydrogen sulfide (72 FR 45378). This provision is inappropriate for SIP approval because it is not related to attainment or maintenance of the NAAQS or other specific requirements of section 110 of the CAA.

### H. Ambient Air Quality Analysis Methods

The submitted revisions to 18 AAC 50.215 “Ambient Air Quality Analysis Methods” include revisions to update the methods for PM<sub>2.5</sub> and ozone, and minor clarifications and edits. The EPA proposes to approve the submitted changes, with the exceptions described below.

The submissions add subparagraph (a)(3) to 18 AAC 50.215 to reference the EPA’s “Meteorological Monitoring Guidance for Regulatory Modeling Applications,” adopted by reference in 18 AAC 50.035(a). Alaska renumbered what was previously subparagraph (a)(3) to (a)(4). What is now subparagraph (a)(4) was added in earlier revisions to allow ADEC to approve alternative reference test methods for collecting ambient monitoring data. In our 2007 action, we did not approve this provision because it provides for unbounded director’s discretion (72 FR 45378). Consistent with our 2007 action, we are proposing to not approve subparagraph (a)(4), which authorizes ADEC to approve any alternative method that ADEC determines is “representative, accurate, verifiable, capable of replication.” In essence, this subparagraph allows ADEC to modify requirements relied on to attain and maintain the NAAQS without a SIP revision. For additional discussion, see the TSD for our 2007 action, which can be found in the docket for this action. See also 78 FR 12460, 12485–86 (February 22, 2013).

As explained above in the discussion of 18 AAC 50.040(h), because 40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2) relating to SILs were vacated by the U.S. Court of Appeals for the District of

Columbia, and subsequently repealed by the EPA, Alaska withdrew the revisions to paragraph (d) which update the SILs table and associated SIL-related requirements.<sup>2</sup>

### I. Enforceable Test Methods

We are proposing to approve the submitted changes to 18 AAC 50.220 “Enforceable Test Methods” except for subparagraphs (A), (B), and (C) of (c)(1), and all of subparagraph (c)(2), as described below.

Subparagraph (c)(2) of 18 AAC 50.220 authorizes ADEC to approve the use of an alternative method using the procedure specified in 40 CFR part 63, Appendix A, Method 301. In essence, subparagraph (c)(2) authorizes ADEC to issue variances from regulatory requirements, including SIP, New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. Consistent with our 2007 action, we are proposing to not approve subparagraph (c)(2), which in essence allows ADEC to modify requirements relied on to attain and maintain the NAAQS without a SIP revision (72 FR 45378). See also 78 FR 12460, 12485–86 (Feb. 22, 2013).

In addition, under the authority of CAA section 110(k)(6), we are removing from the SIP subparagraphs (A), (B), and (C) of 18 AAC 50.220(c)(1) because they relate to test methods for CAA requirements that are not part of the SIP and implement other provisions of the CAA.

### J. Owner-Requested Limits

We are proposing to approve the revisions to 18 AAC 50.225 “Owner-Requested Limits” paragraph (a) and subparagraph (b)(7) because the revisions clarify what can be requested and what needs to be submitted for purposes of this provision. The clarifications do not change the existing requirements for establishing source-specific limitations under 18 AAC 50.225. We are also proposing to approve the addition of paragraph (i) to this provision because it provides for the submission of certain information and clarifies Alaska’s process and effective date, but does not change the existing requirements for establishing source-specific limitations under this rule.

<sup>2</sup> Letter from Alaska Department of Environmental Conservation regarding PM<sub>2.5</sub> Significant Impact Levels and Significant Monitoring Concentrations, dated February 12, 2014.

### K. Construction Permits

The submitted revisions add paragraph (c) to 18 AAC 50.302 “Construction Permits” to clarify that a subsequent revision to a title V permit term or condition that is solely necessary to meet a title V requirement, but was associated with an integrated review conducted under 18 AAC 50.306(c)(3), may be processed through the title V operating permit amendment or modification provisions of 18 AAC 50.326. We are proposing to approve this new provision because it is appropriate and consistent with the CAA for revisions made solely for title V purposes to be revised using the title V amendment or modification provisions.

In addition, under the authority of CAA section 110(k)(6), we are removing from the SIP subparagraph (a)(3) of this provision, because it relates to major sources of hazardous air pollutants. This provision implements other requirements of the CAA and the State has not relied on this requirement to demonstrate attainment or maintenance of the NAAQS or to meet other specific requirements of section 110 of the CAA.

### L. Prevention of Significant Deterioration (PSD) Permits

Alaska’s PSD program was originally approved into the SIP by the EPA on July 5, 1983, and has been revised several times since the original approval. The most recent major revision to Alaska’s PSD program was approved by the EPA in our 2007 action (72 FR 45378). In general, Alaska chooses to adopt by reference the Federal PSD rules in 40 CFR 52.21 rather than the comparable provisions in 40 CFR 51.166, which set forth what is required in a State’s plan, because 40 CFR 52.21 is written to directly state the requirements of an owner or operator. In some cases, Alaska adopted provisions of 40 CFR 51.166 rather than the comparable provisions of 40 CFR 52.21 because 40 CFR 51.166 was a better fit for a SIP-approved PSD program.

Key submitted changes to 18 AAC 50.306 “Prevention of Significant Deterioration (PSD) Permits” include the definition of “national ambient air quality standard,” which is revised to mean “an ambient air quality standard set out in 18 AAC 50.010 for this state” and “ambient air increment” or “maximum allowable increase,” which is revised to mean a maximum allowable increase calculated as described in 18 AAC 50.020 “Baseline Dates and Maximum Allowable Increases.” We are proposing to approve the definition of “national ambient air

quality standard” because the referred-to State ambient air quality standards in 18 AAC 50.010 include the Federal 2006 PM<sub>2.5</sub> NAAQS, 2008 ozone NAAQS, 2008 Pb NAAQS, 2010 SO<sub>2</sub> NAAQS, and 2010 NO<sub>2</sub> NAAQS in 40 CFR part 50. The EPA’s understanding is that the previous reference to “national ambient air quality standard” in this provision referred to the NAAQS as last adopted by reference by ADEC, so that the change in reference from “national ambient air quality standard” to “ambient air quality standards in 18 AAC 50.010” is not a substantive change. It will remain important for ADEC to revise 18 AAC 50.010 promptly after Federal revisions to the NAAQS so that its PSD program continues to meet Federal requirements.

In addition, we are proposing to approve in subparagraph (b)(1)(C) the definition of “ambient air increment” or “maximum allowable increase” because it appropriately refers to the established maximum allowance increases that Alaska has set out in Table 3 of 18 AAC 50.020(b). We are proposing to approve the other submitted clarifications to this rule because they meet the requirements of the CAA.

#### *M. Construction, Minor and Operating Permits: Standard Permit Conditions*

We are proposing to approve the submitted revisions to 18 AAC 50.345 “Construction, Minor and Operating Permits: Standard Permit Conditions” because they meet the requirements of the CAA, with the exception of paragraph (l). Paragraph (l) gives ADEC unbounded discretion to change the source testing requirements of a Federally-enforceable permit without revising the permit. Consistent with our 2007 action, we are proposing to not approve paragraph (l) (72 FR 45378). See also 78 FR 12460, 12485–86 (Feb. 22, 2013)

#### *N. Construction and Operating Permits: Other Permit Conditions*

Alaska submitted revisions to paragraphs (a), (b) and (c) of 18 AAC 50.346 “Construction and Operating Permits: Other Permit Conditions.” Consistent with our 2007 action, we are proposing to not approve 18 AAC 50.346(a) because this provision only requires corrective action after the permittee or ADEC, determines a violation has occurred and thus cannot be construed as monitoring to assure compliance (72 FR 45378). In addition, we are proposing to not approve paragraphs (b) and (c) because the provisions implement requirements of title V of the CAA, and not requirements of section 110 of title I of the CAA.

#### *O. Permit Administration Fees*

Alaska submitted revisions to paragraphs (a), (e), (g), (h), (i), and (m), and subparagraphs (j)(19) and (20) of 18 AAC 50.400 “Permit Administration Fees.” We are proposing to approve the fee provisions in 18 AAC 50.400(e), (g), (h), (i), (j)(19) and (j)(20) because these provisions implement SIP requirements. We are proposing to not approve paragraph (a) of this provision because it implements requirements of title V of the CAA and not requirements of section 110 of title I of the CAA. In addition, it is not necessary to act on paragraph (m), which was repealed, because that provision is not currently in the Federally-approved Alaska SIP.

#### *P. Minor Permits for Air Quality Protection*

The Alaska submissions revise subparagraphs (c)(1), (2), and (3) of 18 AAC 50.502 “Minor Permits for Air Quality Protection” to appropriately refer to “beginning actual construction,” “beginning relocation,” and “beginning a physical change to or a change in operation.” The previous version of these provisions required an owner or operator to obtain a minor permit before commencing construction, relocation, or a physical change, which corresponded generally to a date that occurs before actual construction begins. The CAA, however, does not require a state to tie the obligation to obtain a minor permit to the commence construction date, or to a date that occurs before actual construction begins. Alaska has, accordingly, changed the requirements to obligate a source to obtain a minor permit before “beginning actual construction,” “beginning relocation,” or “beginning a physical change,” consistent with CAA requirements. We are proposing to approve these revisions.

The submissions also add subparagraphs (c)(1)(F), (c)(3)(A)(v) and (c)(3)(B)(v) to 18 AAC 50.502 to establish PM<sub>2.5</sub> thresholds for determining whether the owner or operator of a stationary source must obtain a minor permit for PM<sub>2.5</sub>. These new subparagraphs strengthen the SIP by requiring stationary sources of PM<sub>2.5</sub> above the specified thresholds to obtain a minor permit. These provisions are consistent with Federal requirements in 40 CFR 51.160 through 164, and are approvable. Finally, we are proposing to approve 18 AAC 50.502(e), (g), and (i) because they are consistent with CAA requirements and are clarifications to existing Federally-approved rules.

#### *Q. Minor Permits Requested by the Owner or Operator*

The submissions revise 18 AAC 50.508 “Minor Permits Requested by the Owner or Operator” by clarifying terms and cross-references, and repealing provisions that have been repealed at the Federal level. We are proposing to approve these revisions because they are consistent with the CAA.

#### *R. Minor Permit—Title V Permit Interface*

The submissions add a new provision, 18 AAC 50.510 “Minor Permit—Title V Permit Interface,” which provides that certain terms or conditions established in a minor permit at 18 AAC 50.542 solely for title V purposes can be revised through the applicable title V revision process. We are proposing to approve this provision because it makes permit terms established in a minor permit, solely under the authority of title V, subject to the title V permit revision provisions.

#### *S. Minor Permit: Application*

We are proposing to approve the submitted revisions to 18 AAC 50.540 “Minor Permit: Application.” Specifically, we are proposing to approve the revision to subparagraph (c)(2) to clarify the air quality analysis methods for demonstrating attainment or maintenance of the ambient air quality standards. We also are proposing to approve the NO<sub>2</sub> exception in 50.540(l) because it only pertains to the content of the application, and does not change the requirements for air quality analysis during the permit review process that continue to apply under 18 AAC 50.542(f). Finally, we are proposing to approve the revisions to 18 AAC 50.540(d), (j), and (k) because they either clarify existing rule language or add requirements that will assist in the implementation of these provisions.

#### *T. Minor Permit: Review and Issuance*

The submissions revise 18 AAC 50.542 “Minor Permit: Review and Issuance” in several places. We are proposing to approve the revision to paragraph (a), excluding sources in the additional areas of the Municipality of Anchorage, the City of Fairbanks, Fort Wainwright, and Eielson Air Force Base from fast track procedures. In these areas, ADEC will provide a 30-day public comment period for sources regardless of whether a public comment period was requested. We also are proposing to approve, in subparagraph (c)(2)(A), the addition of a PM<sub>2.5</sub> screening level because it is reasonable and appropriate to offer the fast-track procedure to sources that can show

compliance with the NAAQS using a conservative approach. The screening level of 50 percent of the PM<sub>2.5</sub> standard is set well below the ambient air quality standard for PM<sub>2.5</sub> and appropriately conservative for showing compliance.

In addition, we are proposing to approve, in subparagraph (c)(2)(D), an alternative way to determine if the fast-track procedure in subparagraph (c)(2) is available for a modification. This provision is approvable because it is an appropriately conservative approach that relies on the highest predicted concentrations for use in comparing to the ambient air quality standard and is appropriately conservative for showing compliance.

Consistent with our 2007 action (72 FR 45378), we are proposing to approve the remaining portion of 18 AAC 50.542, except subparagraph (b)(2). Subparagraph (b)(2) allows ADEC to require the owner/operator to submit a permit application online. Alaska did not submit the appropriate documentation to allow the EPA to evaluate the approvability of Alaska's Online System with respect to the EPA's Cross-Media Electronic Reporting Rule (CROMERR). See 70 FR 59848 (October 13, 2005). Therefore, we are proposing to not approve subparagraph (b)(2).

#### *U. Minor Permits: Content*

The submissions revise 18 AAC 50.544 "Minor Permits: Content," a provision that sets forth what a minor permit must contain. We are proposing to approve the submitted revisions to subparagraphs (a)(5) and (6) because they correspond to the clarification in 18 AAC 50.345 that requires the standard permit conditions of 18 AAC 50.345 to apply to minor permits. We are also proposing to approve subparagraph (a)(7) because this provision establishes the process for accommodating an owner or operator request to add the conditions of a minor permit to a title V permit, and because this provision is not contrary to any CAA requirement. Finally, we are proposing to approve subparagraph (c)(3) and paragraph (h) as clarifications of the terms and conditions that are required to be included in a permit.

#### *V. Minor Permits: Revisions*

We are proposing to approve 18 AAC 50.546 "Minor Permits: Revisions," except paragraph (b), which authorizes ADEC to revise "non-substantive elements of a minor permit without further administrative procedures." As discussed in our 2007 action, we did not approve paragraph (b) because it does not adequately define the class of revisions that can be made without

public review (72 FR 45378). For the same reason, we are proposing to not approve paragraph (b) in this action.

#### *W. Conformity*

Revisions to the regulations in Article 7 "Conformity" of 18 AAC 50 were submitted in Alaska's October 21, 2011, submission. We are not addressing these revisions in this action. We intend to address these revisions in a separate action.

#### *X. Definitions*

18 AAC 50.990 "Definitions," defines terms and also adopts by reference applicable definitions set forth in Federal rules. We are proposing to approve the submitted revisions to this provision because they meet the requirements of the CAA. Specifically, we are proposing to approve the repeal of the definitions of "clean unit," "expected arithmetic mean," "expected number" and "pollution control project" because the EPA has previously revoked or repealed the related Federal provision requiring the definition. In addition, we are proposing to approve the updated definition of "good engineering practice stack height" to reference the requirements of 40 CFR 51.100(ii) as revised as of July 1, 2007, and as currently in effect.

We are also proposing to approve the revisions to the definitions of "impairment of visibility," "modification" or "modify," "nonroad engine," "reconstruct" and "reconstruction," "regulated air pollutant," "regulated NSR pollutant" (except that we are deferring action on this definition as it relates to 18 AAC 50.040(i) (nonattainment NSR)), "volatile organic compound," "PAL," "regional administrator," "PM-2.5," "transportation improvement plan," "CO<sub>2</sub> equivalent emissions," and "greenhouse gases" because they reflect the already-established Federal definitions for these terms.

#### *Y. Statutes*

In addition to our review of regulatory changes to 18 AAC 50, we reviewed Alaska statutory provisions submitted as part of the January 28, 2013, submission. Specifically, the submission included portions of Alaska Statutes Chapters 44.46 "Department of Environmental Conservation;" 46.03 "Declaration of Policy;" and 46.14 "Air Quality Control." Based on our review, these submitted statutes continue to provide Alaska with adequate legal authority to carry out the requirements of the Alaska SIP as set forth in sections 110 and 114 of the CAA and its

implementing regulations, in particular 40 CFR 51.230.

Certain aspects and provisions, however, merit further discussion. First, the EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS, and carrying out other specific requirements of section 110 of the CAA. Therefore, our review of the submitted statutory provisions is limited in that respect.

Second, AS 46.14.540 "Authority of Department in Cases of Emergency" states that, under certain circumstances, the commissioner may waive procedural requirements of AS Chapter 46.14 and issue an order to authorize emergency use of the emissions unit. This statutory provision authorizes ADEC to issue a variance to State regulations approved into the SIP without meeting state regulatory requirements for revising a regulation or permit and without a SIP revision. Section 110(i) of the CAA, however, specifically precludes states from changing the requirements of the SIP, except through SIP revisions approved by the EPA as provided in section 110 of the CAA and the implementing regulations at 40 CFR 51.100 to 51.105. See 78 FR 12460, 12485-86 (Feb. 22, 2013). For these reasons, we are proposing to not approve AS 46.14.540 "Authority of Department in Cases of Emergency" into the SIP.

Third, AS 46.14.560 "Unavoidable Malfunctions and Emergencies" provides an affirmative defense to an action for noncompliance with a technology-based emission standard for excess emissions "caused by an unavoidable emergency, a malfunction, or nonroutine repairs of an emissions unit" when asserted under regulations adopted by ADEC under AS 46.14.140. This statutory provision is the basis for 18 AAC 50.240 "Excess Emissions." Both AS 46.14.560 and 18 AAC 50.240 were previously approved into the Alaska SIP. The current SIP submission includes a resubmission of AS 46.14.560, with two minor changes, but does not include a resubmission of 18 AAC 50.240.

On February 22, 2013, the EPA proposed a SIP call in which the EPA identified deficiencies in the startup, shutdown, and malfunction provisions of numerous states, including Alaska's regulation 18 AAC 50.240 (78 FR 12460) (proposed SSM SIP call). In light of the proposed SSM SIP call, we are taking no action on Alaska's submission of AS 46.14.560 at this time, but rather will take action on the submission at a later date.

Fourth, AS 46.14.510(b) relates to maintenance of motor vehicle air pollution control equipment. We incorporated by reference AS 46.14.510(b) on November 18, 1998 (63 FR 63983). In this action, we are removing the incorporation by reference of AS 46.14.510(b) because the provision is addressed by incorporation by reference elsewhere in the Federally-approved SIP (at 18 AAC 52.015(a), (b), 52.990(66)(B) and 52.100(d)(3)).

In general, we are not proposing to incorporate by reference the statutory provisions submitted by Alaska to avoid potential conflict with the EPA's independent authorities. However, we

are proposing to continue to incorporate by reference updated AS 46.14.550 and the definitions in updated AS 46.14.990, where a definition in 18 AAC 50.990 states that it has the meaning given in AS 46.14.990, and where it relates to attainment or maintenance of the NAAQS or other specific requirements of section 110 of the CAA. These incorporated by reference definitions are AS 46.14.990 (4) "building, structure, facility, or installation," (5) "commissioner," (8) "department," (15) "local air quality control program," (16) "major modification," (17) "major stationary source," (18) "operating permit," and (27) "tank vessel."

**III. Proposed Action**

Provisions the EPA Is Proposing To Approve and Incorporation by Reference

Consistent with the discussion and analysis above, the EPA is proposing to approve into the SIP at 40 CFR part 52, subpart C, the Alaska laws and regulations listed in the table below. Note that in those instances where ADEC submitted multiple revisions to a single section of 18 AAC 50, the most recent version of that section (based on state effective date) is proposed to be incorporated into the SIP as it supersedes all previous revisions.

**ALASKA PROVISIONS FOR PROPOSED APPROVAL AND INCORPORATION BY REFERENCE**

State citation	Title/subject	State effective date	Explanation
18 AAC 50.010	Ambient Air Quality Standards	1/4/2013	Except (7) and (8).
18 AAC 50.015	Air Quality Designations, Classifications, and Control Regions.	12/9/2010	
18 AAC 50.020	Baseline Dates and Maximum Allowable Increases.	1/4/2013	
18 AAC 50.035	Documents, Procedures, and Methods Adopted by Reference.	1/4/2013	Except (a)(6) and (b)(4).
18 AAC 50.040	Federal Standards Adopted by Reference	1/4/2013	Except (a), (b), (c), (d), (e), (g), (h)(7), (h)(9), (h)(17), (h)(18), (h)(19), (h)(21), (i), (j), and (k).
18 AAC 50.050	Incinerator Emission Standards	7/25/2008	
18 AAC 50.055	Industrial Processes and Fuel-Burning Equipment	12/9/2010	Except (d)(2)(B).
18 AAC 50.215	Ambient Air Quality Analysis Methods	1/4/2013	Except (a)(4) and (d).
18 AAC 50.220	Enforceable Test Methods	9/14/2012	Except (c)(1)(A), (B) (C), and (c)(2).
18 AAC 50.225	Owner-Requested Limits	9/14/2012	
18 AAC 50.302	Construction Permits	9/14/2012	Except (a)(3).
18 AAC 50.306	Prevention of Significant Deterioration (PSD) Permits.	1/4/2013	
18 AAC 50.345	Construction, Minor and Operating Permits: Standard Permit Conditions.	9/14/2012	Except (b), (c)(3), and (l).
18 AAC 50.400	Permit Administration Fees	9/14/2012	Except (a), (b), (c), (d), (f), (j)(1) through (j)(18), (j)(21) through (j)(23), and (k).
18 AAC 50.502	Minor Permits for Air Quality Protection	1/4/2013	
18 AAC 50.508	Minor Permits Requested by the Owner or Operator.	12/9/2010	
18 AAC 50.510	Minor Permit: 18 AAC 50.510 Minor Permit—Title V Permit Interface.	12/9/2010	
18 AAC 50.540	Minor Permit: Application	1/4/2013	
18 AAC 50.542	Minor Permit: Review and Issuance	1/4/2013	Except (b)(2).
18 AAC 50.544	Minor Permits: Content	12/9/2010	
18 AAC 50.546	Minor Permits: Revisions	7/15/2008	Except (b).
18 AAC 50.990	Definitions	9/14/2012	Except (92) as it relates to 18 AAC 50.040(i).
AS 46.14.550	Responsibilities of Owner and Operator; Agent for Service.	1/4/2013	
AS 46.14.990	Definitions	1/4/2013	Except (1)–(3), (6), (7), (9)–(14), (19)–(26), and (28).

As discussed above, EPA proposes to find that the statutes submitted by ADEC in its SIP revisions, with the exceptions discussed above, continue to provide Alaska with adequate legal authority to carry out the requirements of the Alaska SIP. In general, the EPA is not proposing to incorporate by reference the statutory provisions submitted by Alaska to avoid potential conflict with the EPA's independent authorities.

Provisions the EPA Is Proposing To Not Approve

We are proposing to not approve the following provisions for the reasons explained above and in the TSD:

- 18 AAC 50.010 "Ambient Air Quality Standards," paragraphs (7) and (8).
- 18 AAC 50.030 "State Air Quality Control Plan."
- 18 AAC 50.035 "Documents, Procedures, and Methods Adopted by

Reference," subparagraphs (a)(6) and (b)(4).

- 18 AAC 50.040 "Federal Standards Adopted by Reference," paragraphs (a), (b), (c), (d), (e), (g), (j) and (k), and subparagraph (h)(21).
- 18 AAC 50.055 "Industrial Processes and Fuel-Burning Equipment," subparagraph (d)(2)(B).
- 18 AAC 50.215 "Ambient Air Quality Analysis Methods," subparagraph (a)(4).

- 18 AAC 50.220 “Enforceable Test Methods,” subparagraph (c)(2).
- 18 AAC 50.326 “Title V Operating Permits, paragraph (e).
- 18 AAC 50.345 “Construction and Operating Permits: Standard Permit Conditions,” paragraph (l).
- 18 AAC 50.346 “Construction and operating permits: Other permit conditions,” paragraphs (a), (b) and (c).
- 18 AAC 50.400 “Permit Administration Fees,” paragraph (a).
- 18 AAC 50.542 “Minor Permit: Review and Issuance,” subparagraph (b)(2).
- 18 AAC 50.546 “Minor Permits: Revisions,” paragraph (b).
- AS 46.14.540 “Authority of Department in Cases of Emergency.”

Provisions the EPA Is Removing From the SIP or From Incorporation by Reference

Under the authority of CAA section 110(k)(6), we are removing the following provisions from the SIP because they implement other requirements of the CAA and the State has not relied on these provisions to demonstrate attainment or maintenance of the NAAQS or to meet other specific requirements of section 110 of the CAA: 18 AAC 50.220(c)(1)(A), (B), (C) and 18 AAC 50.302(a)(3). We are also removing AS 46.14.510(b), which was incorporated by reference on November 18, 1998 (63 FR 63983). However, we have determined that the provision is addressed by incorporation by reference elsewhere in the Federally-approved SIP.

Provisions the EPA Is Taking No Action On

Finally, as detailed above and in the TSD, we are taking no action on the following Alaska provisions: 18 AAC 50.040 “Federal Standards Adopted by Reference” paragraph (i) (adoption by reference of Federal nonattainment NSR regulations at 40 CFR 51.165); 18 AAC 50 Article 7 “Conformity;” and AS 46.14.560 “Unavoidable Malfunctions and Emergencies.” We intend to address these changes in a separate action.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not

impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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);
- is not subject to the 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: April 23, 2014.

**Dennis J. McLerran,**

*Regional Administrator Region 10.*

[FR Doc. 2014–10204 Filed 5–2–14; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R03–OAR–2013–0690; FRL–9910–36–Region–3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia’s Redesignation Request and the Associated Maintenance Plan of the West Virginia Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State of West Virginia’s request to redesignate to attainment the West Virginia portion of the Martinsburg-Hagerstown, WV-MD nonattainment area (Martinsburg Area or Area) for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). EPA is also proposing to determine that the Martinsburg Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. In addition, EPA is proposing to approve as a revision to the West Virginia State Implementation Plan (SIP), the associated maintenance plan to show maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>) mobile vehicle emissions budgets (MVEBs) for Berkeley County, West Virginia for the 1997 annual PM<sub>2.5</sub> NAAQS which EPA is proposing to approve for transportation conformity purposes. Furthermore, EPA is proposing to approve as a revision to the West Virginia SIP, the 2007 base year emissions inventory for the Area for the 1997 annual PM<sub>2.5</sub> NAAQS. These actions are being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 4, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0690 by one of the following methods: