

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 application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this

action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

§ 52.570 [Amended]

■ 2. Amend § 52.570(c) by removing the entry for "391-3-1-.02(2)(ooo)."

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0133; FRL-9961-93-Region 10]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

requirements for the 2010 nitrogen dioxide (NO₂) and 2010 sulfur dioxide (SO₂) NAAQS.

DATES: This final rule is effective June 12, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2016-0133. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information 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 is publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below, to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, Air Planning Unit, Office of Air and Waste (OAW-150), Environmental Protection Agency—Region 10, 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553-6357; email address: hall.kristin@epa.gov.

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
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I. Background

On May 12, 2015, Alaska submitted a SIP to meet the infrastructure requirements of Clean Air Act (CAA) sections 110(a)(1) and (2) for the 2010 NO₂ and 2010 SO₂ NAAQS. On July 20, 2016, the EPA proposed to approve the submission as meeting certain infrastructure requirements (81 FR 47103). Please see our proposed rulemaking for further explanation and the basis for our finding. The public comment period for this proposal ended on August 19, 2016. We received one comment, from Robert Ukeiley.

II. Response to Comment

Comment: The “EPA must disapprove 110(a)(2)(C) because the Alaska SIP does not require that minor sources cannot obtain a minor source permit if they will cause or contribute to a violation of any of the current NAAQS. Furthermore, for some pollutants, the Alaska SIP has thresholds below which sources do not have to demonstrate that they will not cause or contribute to a violation of that NAAQS. However, there is no evidence that sources below these thresholds cannot cause or contribute to a NAAQS violation. Rather, these thresholds are arbitrary numbers.”

Response: The EPA agrees that CAA section 110(a)(2)(C) and the minor new source review regulations at 40 CFR 51.160 through 51.164 require SIPs to include procedures by which the state or local agency responsible for final decision-making on an application or approval to construct or modify will prevent such construction or modification if it will interfere with the attainment or maintenance of a national standard or if it will result in a violation of applicable portions of the control strategy. *See* 40 CFR 51.160(b). The EPA explained its approach to reviewing the minor source element of CAA section 110(a)(2)(C) in its proposed rulemaking for this action: “Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state’s existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and the EPA’s regulations that pertain to such programs.” *See* 81 FR 47103 at 47106 (July 20, 2016).

In its 2010 NO₂ and 2010 SO₂ NAAQS infrastructure SIP submission, Alaska certified that its SIP contains provisions to address the CAA section 110(a)(2)(C) requirements regarding new minor sources and modifications in Article 5 (minor permits) of Alaska’s air quality control regulations set forth at 18 AAC 50. Alaska’s SIP-approved minor new source review program addresses NAAQS pollutants, including NO₂ and SO₂. The commenter objects to these SIP-approved rules for two reasons. First, the commenter asserts that the rules do not address the non-interference component for the minor new source/minor modification permitting element. However, we disagree with the commenter. Alaska’s

SIP-approved rules include provisions to deny a minor new source construction/modification permit if the source at issue will result in a violation of an ambient air quality standard. *See* 18 AAC 542(f) *Approval Criteria*.

The commenter also objects to these SIP-approved rules because they include emissions thresholds below which a minor new source review permit may not be required. *See* 18 AAC 50.502. We agree with the commenter that Alaska’s rules do include emissions thresholds for both new sources and modifications with respect to certain pollutants, including NO₂ and SO₂, below which minor new source review permits may not be required. The EPA’s requirements for SIP-approved minor new source review programs do not require a state to permit each and every stationary source no matter how small, but rather require that a state specifically identify the types and sizes of facilities that will be subject to review. *See* 40 CFR 51.160(e). We have previously found that Alaska’s current program meets all minor new source review permitting requirements set forth at 40 CFR 51.160 through 40 CFR 51.164, including this requirement (September 19, 2014; 79 FR 56268). Therefore, we are finalizing our action.

III. Final Action

The EPA is approving the May 12, 2015 Alaska SIP submission as meeting the following CAA section 110(a)(2) infrastructure elements for the 2010 NO₂ and 2010 SO₂ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We note that the May 12, 2015 submission also included revisions to Alaska’s transportation conformity regulations, approved on September 8, 2015 (80 FR 53735), and updates to general air quality and permitting regulations, approved on May 19, 2016 (81 FR 31511).

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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);

- 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a

“major rule” as defined by 5 U.S.C. 804(2).

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 11, 2017.

Michelle L. Pirzadeh,
Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart C—Alaska

■ 2. In § 52.70, the table in paragraph (e) is amended by:

■ a. Revising the entry for “CAA Section 110 Infrastructure Certification Documentation and Supporting Documents”; and

■ b. Adding two entries at the end of the table for “110(a)(2) Infrastructure Requirements—2010 NO₂ NAAQS” and “110(a)(2) Infrastructure Requirements—2010 SO₂ NAAQS”.

The revision and additions read as follows:

§ 52.70 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal date | EPA approval date | Comments |
|--|--|----------------------|---|---|
| * | * | * | * | * |
| State of Alaska Air Quality Control Plan: Volume III. Appendices | | | | |
| Section II State Air Quality Control Program | | | | |
| * | * | * | * | * |
| CAA Section 110 Infrastructure Certification Documentation and Supporting Documents. | Statewide | 5/12/15 | 5/12/17, [Insert Federal Register citation]. | * |
| * | * | * | * | * |
| Section 110(a)(2) Infrastructure and Interstate Transport | | | | |
| * | * | * | * | * |
| 110(a)(2) Infrastructure Requirements—2010 NO ₂ NAAQS. | Statewide | 5/12/15 | 5/12/17, [Insert Federal Register citation]. | Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 NO ₂ NAAQS. |
| 110(a)(2) Infrastructure Requirements—2010 SO ₂ NAAQS. | Statewide | 5/12/15 | 5/12/17, [Insert Federal Register citation]. | Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 SO ₂ NAAQS. |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0584; FRL-9960-43-Region 10]

Air Plan Approval; ID, Updates to Incorporations by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve, and incorporate by reference, portions of Idaho’s April 28, 2016, State Implementation Plan submittal (SIP submittal) that update the incorporation by reference of federal air quality regulations. We note that this action does not address the changes