6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2018-0823; FRL-10003-24-Region 10]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On October 25, 2018, the State of Alaska made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA approves the Alaska SIP as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

DATES: This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2018-0823. All documents in the docket are listed on the https://www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 will be publicly available only in hard copy form. Publicly available docket materials are available at https://www.regulations.gov, or please contact the person listed in the FOR FURTHER

INFORMATION CONTACT section for additional availability information.

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

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I. Background

On October 25, 2018, the Alaska Department of Environmental Conservation (ADEC) made a submission addressing the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.[1] This "good neighbor" provision of the CAA requires that a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of such NAAQS in any other state or that will interfere with maintenance of the NAAQS in any other state.

On June 5, 2019, we proposed to approve Alaska's SIP submission (84 FR 26041). The reasons for our proposed approval are included in the proposed action and will not be restated

[1] Alaska's October 25, 2018 submission addresses all CAA sections 110(a)(1) and (2) infrastructure requirements for the 2015 ozone NAAQS (including interstate transport prongs 1 and 2) and includes regulatory updates and permitting rule revisions for approval into the SIP. This action addresses the portion of the submission related to interstate transport prongs 1 and 2. We are addressing the remainder of the submission in separate actions on August 29, 2019 (84 FR 45419) and October 15, 2019 (84 FR 55094).

here. The public comment period for the proposed action closed on July 5, 2019. We received adverse comments from one anonymous commenter. Following is our response to each distinct issue raised by the commenter.

II. Response to Comment

Comment 1: The commenter stated that the EPA should not approve Alaska's SIP submission because ADEC did not model Alaska emissions and the effect of those emissions on other states and Canada.

Response 1: The commenter is correct that ADEC did not model Alaska emissions and the effect of those emission on other states and Canada. However, that is not a basis for disapproval in this instance. Alaska's SIP submission included information and analysis on the amount and sources of ozone precursor emissions from Alaska, trends in monitored ambient ozone levels, meteorological conditions, distances from Alaska to the nearest receptors in other states, and intervening geography that isolates Alaska from other areas that have ozone problems. ADEC concluded that emissions from Alaska sources do not significantly contribute to nonattainment of the 2015 ozone NAAQS in any other state and do not interfere with maintenance of the 2015 ozone NAAQS in any other state.

In our review, we evaluated Alaska's SIP submission and conducted our own weight of evidence analysis to determine whether we agreed with ADEC's conclusion. We assessed emissions inventory data, monitoring trends, geography, meteorology, and current SIP-approved provisions. We found these factors sufficiently informative regarding Alaska's potential to adversely impact air quality in downwind states without conducting modeling of emissions as suggested by the commenter, and therefore, proposed to approve the SIP submission. We note this is not a new approach. The EPA has conducted weight of evidence analyses to evaluate prior

Alaska interstate transport SIP submissions, and we believe it to be a reasonable and appropriate approach in this instance.[2]

The EPA further agrees that ADEC did not analyze potential transport to Canada, but that is not a deficiency in the State's analysis. The evaluation of international air quality impacts is not a requirement under CAA section 110(a)(2)(D)(i)(I), which is the only provision of the statute addressed in this action.[3]

Comment 2: The commenter stated, "the EPA can't rely on relative emissions to justify [a finding of] no significant contribution or interference with maintenance" of the 2015 ozone NAAQS. The commenter also noted that, in our proposal, we showed that nitrogen oxide (NOx) emissions from certain Alaska sources ranked second highest in the region.

Response 2: The commenter is correct that, based on the 2014 National Emissions Inventory (2014 NEI), NOx emissions from mobile and stationary sources in Alaska ranked second highest of the Region 10 states.[4] Our analysis, however, also compared Alaska emissions to those nationwide and determined that, based on the 2014 NEI, NOx emissions from Alaska mobile and stationary sources totaled just one percent of national NOx emissions.[5] This comparison of relative emissions puts Alaska emissions estimates into context and is a useful exercise in evaluating the Alaska ozone interstate transport SIP submission. Importantly, this was just one factor in our weight of evidence analysis and was considered in conjunction with other

[2] Most recently, we took this approach in our June 27, 2018 action approving the Alaska SIP for purposes of CAA section 110(a)(2)(D)(i)(I) with respect to the 2012 fine particulate matter NAAQS (83 FR 30048).
[3] CAA sections 110(a)(2)(D)(ii) and 115 address international pollution abatement. We proposed approval of this element for the 2015 ozone NAAQS in a separate action on October 15, 2019 (84 FR 55094). Alaska has no pending obligations under CAA section 115 with respect to Canada or any other foreign country.
[4] Alaska's stationary and mobile source NOx emissions were estimated to be 127,194 tons. Washington's emissions were higher (234,050 tons), while Oregon and Idaho's emissions are somewhat lower (125,626 and 81,135 tons, respectively).
[5] Based on the 2014 NEI.

factors including monitoring trends, geography, meteorology, and current SIP-approved provisions. In particular, the fact that other, geographically-closer states with comparable or greater emission levels did not impermissibly impact downwind air quality problems supports the conclusion that Alaska emissions are not likely to be linked to identified nonattainment and maintenance receptors in any other state with respect to the 2015 ozone NAAQS. We continue to find this to be true.

Comment 3: The commenter took issue with the EPA's evaluation of in-state monitored ozone levels. The commenter asserted that in-state levels are not predictive of downwind levels.

Response 3: We found it informative to review in-state monitored ozone levels as part of our weight of evidence analysis. This kind of information can shed light on whether in-state conditions are changing and whether those changes could have downwind implications. For example, if ozone levels at monitoring sites in Alaska were rising over time, it could suggest increased precursor emissions from Alaska sources which could also have impacts on downwind air quality in other states. In our proposal, we assessed monitored ozone trends in Alaska and determined that in-state ozone levels were well below the 2015 ozone NAAQS. The table of design values in our proposal illustrated that trends have been generally flat from 2010 to 2017, suggesting that in-state sources of precursor emissions may not be changing much, and may not be a big factor potentially contributing to future transport problems.[6] We reiterate that in-state monitored ozone levels were just one piece of information that helped to inform the EPA's analysis and conclusion.

Comment 4: The commenter said we failed to mention that Alaska was not included in the EPA's modeling and suggested the EPA may have considered Alaska as an international

[6] Proposal published June 5, 2019, 84 FR 26041; at page 26045, Table 2.

contributor. The commenter concluded that we ignored Alaska emissions in our modeling and for that reason it is not appropriate to use the EPA's modeling data to identify downwind receptors in the first step of our analysis.

Response 4: We disagree that the proposal failed to explain the scope of the modeling. Our proposal clearly stated that the EPA conducted modeling and released the data to states in the form of several memoranda, but that "none [of the memoranda] project[ed] design values at monitoring sites located in Alaska, nor apportion[ed] specific downwind impacts to Alaska."[7] We also stated that the memorandum released in March of 2018 helped to identify potential downwind receptors in the first step of our analysis, but that it did not inform whether Alaska was sufficiently linked to those receptors, under the second step of EPA's four-step analysis.[8]

Our proposal described the EPA's modeling domain (which included the 48 contiguous United States and the District of Columbia) and referenced the 2018 memorandum, placed in the docket for this action.[9] The EPA did not consider Alaska as an international contributor to downwind states, nor did we ignore Alaska emissions. Any pollutant concentrations from Alaska emissions would have been included as part of the boundary condition concentrations used as inputs to the model. These boundary conditions along the perimeter of our modeling domain were derived from simulations of the GEOSChem global chemistry model for the year 2011.[10] A description of the GEOSChem modeling platform leveraged for these boundary conditions has been placed in the docket for this action.[11] We continue to believe it is appropriate to use the

[7] Proposal published June 5, 2019, 84 FR 26041; at page 26042, column 3.
[8] Ibid at page 26044, column 3.
[9] Ibid at page 26043, column 2.
[10] The modeling domain is the area within the purple rectangle in Figure 2-1 of the EPA's Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values, dated December 2018.
[11] B.H. Henderson et al: A database and tool for boundary conditions for regional air quality modeling: description and evaluation, Geosci. Model Dev., 7, 339-360, 2014 (published February 18, 2014).

modeling data released in the EPA's March 2018 memorandum to identify potential downwind receptors at the first step in our analysis.

Comment 5: The commenter claimed that the EPA erred in calculating and using geographic distance and the relative emissions of intervening states as factors in our analysis. The commenter argued that it would be hard to imagine other states making this kind of assertion and the EPA treating it as a valid approach.

Response 5: We believe it is appropriate and reasonable to consider the approximately 1,000-mile distance from Alaska's southernmost border to the nearest identified nonattainment and maintenance receptors (located in Sacramento, California) as part of our weight of evidence analysis in this action. We also believe it is appropriate to compare Alaska's emissions to those of intervening states (Washington and Oregon), which are closer to the Sacramento, California nonattainment and maintenance receptors, and which are not linked by the EPA's modeling to those Sacramento receptors. Our weight of evidence analytical approach is specific to Alaska and the submission before us, and functions, in the absence of the contribution data available with respect to impacts on downwind states within our modeling domain, to provide a screening level of analysis that Alaska's emissions are not significantly contributing to a downwind air quality problem.[12] Our evaluation considers not just that the intervening states have higher emissions, but that at those higher levels, the impact on downwind air quality problems does not exceed the 1% air quality threshold. Thus, it is reasonable for the EPA to conclude that Alaska, at a greater distance and with lower emission levels, will also not exceed that threshold. The EPA has in fact employed this rationale in other actions under the good neighbor provision, where contribution

[12] Proposal published June 5, 2019, 84 FR 26041; at page 26045.

modeling data was unavailable.[13]

Comment 6: The commenter said the EPA should not point to the Alaska SIP-approved major new source review permitting programs as programs that help address potential future interstate transport of pollutants. The commenter claimed no such program has ever prevented a source from being constructed due to interstate transport concerns. The commenter further claimed that state permitting officials routinely "look the other way" and that source owners and operators try to find loopholes or restrict their modeling to avoid performing analyses which would show impacts to nearby states.

Response 6: In our proposal, we pointed to Alaska's SIP-approved preconstruction permitting programs (known as "new source review") as one piece of evidence in our weight of evidence analysis. We believe it is appropriate for the EPA to evaluate the current Federally-approved Alaska SIP on its face for measures that control emissions of ozone precursors. Alaska's new source review permitting programs are Federally-enforceable measures designed to control emissions from proposed new and modified stationary sources of regulated air pollutants, including NOx and VOCs as precursors to ozone.

We most recently approved revisions to Alaska's new source review permitting programs on August 29, 2019 (84 FR 45419). Alaska routinely evaluates new source review permit applications from subject sources in Alaska and issues permits containing emission limits, work practice standards, monitoring requirements and other controls designed to ensure compliance with emission limits and provide for continued attainment of the ozone NAAQS. The EPA cited this program as helping to ensure that future changes in emissions from Alaska are not likely to

[13] See prior interstate transport actions with respect to the 2012 fine particulate matter NAAQS. For example, the September 11, 2019 action on the Utah SIP (84 FR 47893) and the August 20, 2018 action on the Washington SIP (83 FR 42031).

lead to impermissible impacts on air quality in downwind states. Nonetheless, because the EPA finds in this action that Alaska will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS downwind based on current emission levels, Alaska does not have an obligation to prohibit any specific level of emissions in the State under the good neighbor provision. Other provisions of the CAA (e.g. sections 110(k)(5) and 126(b)) provide bases for reevaluating this conclusion if future changes in emissions change Alaska's impact on downwind states.

With respect to the commenter's concerns about implementation of permitting programs, the comment is vague and lacks supporting evidence or documentation. Moreover, this comment is related to implementation of the SIP, and is therefore outside the scope of this action. In the context of acting on infrastructure and interstate transport submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[14] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

Comment 7: The commenter asserted the EPA should perform modeling and affirmatively determine whether Alaska sources significantly contribute to nonattainment of the 2015 ozone NAAQS in any other state or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Response 7: To help states develop interstate transport SIPs for the 2015 ozone NAAQS, the EPA modeled the contiguous United States and the District of Columbia and produced data

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

projecting future design values at monitoring sites and apportioning specific downwind impacts to upwind states.[15] The EPA's modeling did not quantify Alaska's contribution to downwind receptors, however nothing in the CAA requires the EPA to do so where other reasonable means are available for evaluating Alaska' s impact to downwind receptors. The EPA did not include Alaska in the modeling domain primarily because it is remote and isolated in relation to other states with identified nonattainment and/or maintenance receptors for the 2015 ozone NAAQS.

The EPA relied on the best information available to inform its decision and evaluated Alaska's SIP submission through a weight of evidence analysis of information, including emissions inventory data, monitoring trends, geography, meteorology, and SIP-approved provisions that limit current and future emissions of ozone precursors. The EPA has used a weight of evidence analysis to assess Alaska interstate transport SIP submissions in the past, most recently on June 27, 2018 (83 FR 30048).[16] None of the comments justify altering our proposed approval of Alaska's interstate transport SIP submission for the 2015 ozone NAAQS. Therefore, we are finalizing our action as proposed.

III. Final Action

We approve the Alaska SIP as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Review

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

[15] See supra note 9.
[16] This action approved the Alaska SIP for purposes of CAA section 110(a)(2)(D)(i)(I) with respect to the 2012 fine particulate matter NAAQS.

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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 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 [**insert date 60 days after date of publication in the Federal Register**]. 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 section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 2, 2019.

Chris Hladick,
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, amend the table in paragraph (e) by adding the entry "Interstate Transport Requirements – 2015 Ozone NAAQS" at the end of the table to 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 nonattainment area	State submittal date	EPA approval date	Explanations
* * * * * * *				
Interstate Transport Requirements – 2015 Ozone NAAQS	Statewide	10/25/2018	**[Insert date of publication in the Federal Register], [Insert Federal Register citation]**	Approves SIP for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2015 Ozone NAAQS.

[FR Doc. 2019-27162 Filed: 12/17/2019 8:45 am; Publication Date: 12/18/2019]