unused bridge is an unreasonable obstruction to navigation. The Coast Guard will initiate a new rulemaking when an appropriate methodology is developed.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525; Department of Homeland Security Delegation No. 0170.1.

Dated: March 9, 2012.

Dana A. Goward,

Director, Maritime Transportation Systems, United States Coast Guard.

[FR Doc. 2012–6861 Filed 3–21–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0883, FRL- 9650–4]

Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the Alaska SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA is proposing to approve revisions submitted by Alaska to update the SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, federal Prevention of Significant Deterioration (PSD) program changes to regulate NOx as a precursor to ozone, and provisions to satisfy CAA section 128 conflict of interest disclosure requirements.

DATES: Comments must be received on or before April 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0883, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, 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–2011–0883. 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 whose disclosure 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 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 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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. 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: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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I. What action is EPA proposing?

EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the Alaska SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure'' elements of section 110(a)(2). The Alaska Department of Environmental Conservation (ADEC) submitted a SIP to EPA on March 2, 2012, certifying that Alaska's SIP meets the infrastructure obligations for the 1997 ozone NAAQS, 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 ozone NAAQS, and 2008 lead NAAQS. The submittal included an attachment analyzing Alaska's SIP as it relates to each section of the infrastructure requirements. The state has requested parallel processing on the March 2, 2012 submittal. Under this procedure, the state submits the SIP revision to EPA before final adoption by

the state. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes its notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is completing its rulemaking action. ADEC provided a schedule to EPA for finalizing the March 2, 2012 SIP submittal, including public review, state adoption, and submittal of the final SIP package to EPA. If changes are made to the SIP submittal after this proposal, such changes will be described in EPA's final rulemaking action and, if such changes are significant, EPA may re-propose the action and provide an additional public comment period.

At this time, EPA is acting on the infrastructure SIP submittal for the 110(a)(2) required elements as they relate to the 1997 8-hour ozone NAAQS. This action does not address infrastructure requirements with respect to the 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, 2008 ozone NAAQS, and 2008 lead NAAQS which EPA intends to act on at a later time. This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which were previously approved by EPA on October 15, 2008 (73 FR 60955).

EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. On April 9, 2010 ADEC submitted a SIP revision to EPA which includes, among other things, revisions to Alaska Administrative Code Chapter 50 ''Air Quality Control'' to include recent changes to the NAAQS for $PM_{2.5}$, ozone, and lead; federal reference and interpretation methods for monitoring and measuring $PM_{2.5}$, ozone and lead in ambient air; and definitions for $PM_{2.5}$ and ozone. EPA is proposing to approve the portions of this SIP revision which update the Alaska SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, and a general definition of ozone. On November 19, 2010, ADEC submitted a SIP revision which, among other things, contains updates to Alaska's PSD program. EPA is proposing to concurrently approve the Alaska PSD program revisions to regulate NO_X as a precursor to ozone. On March 2, 2012, ADEC submitted the above-described infrastructure certification, in addition to state conflict of interest and financial disclosure regulations for purposes of meeting the requirements of CAA 128 and rule changes to meet federal requirements related to nitrogen dioxide, fine particulate matter and lead. In this action, EPA is proposing to approve the Alaska state conflict of interest and financial disclosure regulations as meeting the requirements of CAA section 128. EPA will act on the remainder of these SIP revisions in future actions.

II. What is the background for the action that EPA is proposing?

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standard created uncertainty about how to proceed, and many states did not provide the required infrastructure SIP submissions for the newly promulgated standard.

To help states meet this statutory requirement for the 1997 ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[1] This guidance provides that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's federally-approved SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

III. What infrastructure elements are required under CAA sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA's 2007 guidance clarified that two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007 (2007 Guidance).

nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or 110(a)(2)(I).

This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which was approved by EPA on October 15, 2008 (73 FR 60955). Furthermore, EPA interprets the section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

IV. What is the scope of action on infrastructure submittals?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[2] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP for the 1997 8-hour ozone NAAQS submittal from Alaska.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the 1997 8-hour ozone infrastructure SIP for Alaska.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP

[2] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[3] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[4]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[5] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[6] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[7]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

EPA's 2007 Guidance provided recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[10] For the

[3] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[4] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[5] See, e.g., *Id.,* 70 FR 25,162, at 63–65 (May 12, 2005)(explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[7] For example, implementation of the 1997 PM*2.5* NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[8] *Id.,* at page 2.

[9] *Id.,* at attachment A, page 1.

[10] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[11] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the 1997 8-hour ozone infrastructure SIP for Alaska.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[14]

V. What is EPA's analysis of Alaska's submittal?

110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. EPA notes that the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of Section 172, not the timing requirement of Section 110(a)(1).

Alaska's submittal: Alaska's SIP submittal cites an overview of the Alaska environmental and air quality laws found at AS 46.03 and AS 46.14 and regulations found at AAC Title 18 Environmental Conservation, Chapter

[11] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[13] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21,2010)(proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011)(final disapproval of such provisions).

50 Air Quality Control. The regulations include statewide ambient air quality standards, major and minor permits, transportation conformity and fees, among others. A detailed discussion of the relevant laws and regulations can be found in the technical support document (TSD) in the docket for this action.

EPA analysis: Alaska's SIP meets the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS. Furthermore, Alaska has no areas designated nonattainment for the 1997 8-hour ozone NAAQS. As a result, Alaska primarily regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs.

The current federally-approved Alaska ambient air quality standards rule at 18 AAC 50.010 contains the previously promulgated one-hour ozone standard, but not the 1997 ozone standard at an 8-hour averaging period. Alaska submitted a SIP revision to EPA on April 9, 2010, which includes a number of updates to incorporate recent federal ozone regulatory changes. The SIP revision updates Alaska's ambient air quality standards at 18 AAC 50.010 to include the 2008 ozone standard of 0.075 ppm at an 8-hour averaging period. This revision inherently satisfies the requirements for the 1997 8-hour ozone NAAQS because the 2008 8-hour ozone NAAQS of 0.075 ppm is more stringent than the 1997 8-hour ozone NAAQS of 0.080 ppm. The SIP revision also adds a basic definition of ozone at 18 AAC 50.990(129). In addition, the April 9, 2010, SIP revision revises the lead-in language of 18 AAC 50.010 to reference analytical methods adopted by reference at 18 AAC 50.035. The SIP revision then incorporates by reference these analytical methods (40 CFR part 50, appendix P: Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone) at 18 AAC 50.035(b)(1) and adds a reference to 40 CFR part 50 appendix P at 18 AAC 50.215(a)(2). EPA is proposing to approve these portions of the April 9, 2010, SIP revision in order to update Alaska's SIP to reflect the most recent changes to the ozone NAAQS and related analytical methods. EPA is also proposing to concurrently approve Alaska's SIP as meeting the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the Clean Air Act and existing EPA guidance [15] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the Clean Air Act and existing EPA guidance (52 FR 45109), November 24, 1987, and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the Clean Air Act and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Alaska's submittal: Alaska's SIP submittal references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations relevant to the ozone NAAQS. The submittal also describes Memoranda of Understanding between ADEC and the Municipality of Anchorage (MOA) and Fairbanks North Star Borough (FNSB) to operate air quality control programs in their respective jurisdictions. ADEC's Air Non-Point Mobile Source Program and Air Monitoring & Quality Assurance Program work with MOA and FNSB to prepare Alaska's annual ambient air monitoring network plan, the most recent of which is the 2011 Alaska Air Monitoring Network Plan at *http://www.dec.state.ak.us/air/am/index.htm.* There are no nonattainment areas for 1997 8-hour ozone standard in Alaska. ADEC has recently implemented monitoring for ozone in the Anchorage area, as outlined in the above-referenced monitoring network plan.

Alaska's SIP submittal states that Alaska collects and validates State and Local Air Monitoring Stations and Special Purpose Monitoring ambient air quality monitoring data and reports the data to EPA through the Air Quality System (AQS) on a quarterly basis. The submittal notes that ADEC's revised ''Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program'' can be found at *http://www.dec.state.ak.us/air/doc/ADEC_AMQA_QAPP_23FEB10-final.pdf.*

EPA analysis: A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58 was submitted by Alaska to EPA on January 18, 1980 (40 CFR 52.70) and approved by EPA on April 15, 1981. This air quality monitoring plan has been subsequently updated and submitted to EPA. The most recent plan is dated July 1, 2011, and was approved by EPA on October 5, 2011. This plan includes, among other things, the locations for ozone monitoring. The plan is available for public review at *http://www.dec.state.ak.us/air/am/index.htm.*

As discussed above, Alaska submitted a SIP revision to EPA on April 9, 2010, which includes, among other things, the incorporation by reference of 40 CFR part 50, appendix P: Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone. EPA is proposing to approve the incorporation by reference of these analytical methods for ozone. Based on the foregoing, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

Alaska's submittal: Alaska's SIP submittal refers to ADEC's statutory authority to regulate stationary sources via an air permitting program established in AS 46.14 Air Quality Control, Article 01 General Regulations and Classifications and Article 02 Emission Control Permit Program. In addition, Alaska's SIP submittal states that a violation of these prohibitions or any permit condition can result in civil actions, administrative penalties, or

[15] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' Memorandum to EPA Air Division Directors, August 11, 1999.

criminal penalties. In addition, Alaska's SIP submittal refers to regulations pertaining to compliance orders and enforcement proceedings found in 18 AAC Chapter 95 Administrative Enforcement. Please see the TSD in the docket for this action for a detailed description.

EPA analysis: As discussed above, EPA is not evaluating nonattainment related provisions in this action, such as the nonattainment NSR program required by part D of the CAA. In addition, Alaska has no nonattainment areas for the 1997 ozone NAAQS. EPA believes the cited Alaska SIP-approved provisions provide ADEC with the authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or environment. Enforcement cases may be referred to the State Department of Law. Therefore, EPA is proposing to approve the Alaska SIP as meeting the requirements of section 110(a)(2)(C) relating to enforcement for the 1997 8-hour ozone NAAQS.

EPA believes Alaska's PSD program generally meets the requirements for the 1997 8-hour ozone standard, with the exception discussed below. EPA recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). However, in order for Alaska's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must also properly regulate nitrogen oxides as a precursor to ozone. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS, which includes requirements for PSD programs to treat nitrogen oxides as a precursor to ozone (72 FR 71612). The phase 2 implementation rule accordingly updated the regulations at 40 CFR 51.166 and 40 CFR 52.21 to meet these requirements, effective January 30, 2006. This effective date is after the July 1, 2004 date of incorporation by reference of 40 CFR 51.166 and 40 CFR 52.21 by the current federally-approved Alaska SIP. In other words, Alaska's current federally-approved PSD program does not meet the requirements of the phase 2 ozone implementation rule.

On November 19, 2010, Alaska submitted a SIP revision that includes, among other things, updates to the state's incorporate by reference dates of federal PSD regulations. Specifically, the SIP revision updates the Alaska SIP to incorporate by reference revised federal definitions of several terms referenced by the Alaska PSD program including ''major stationary source,'' ''major modification,'' ''significant'' and ''regulated NSR pollutant.'' As a result of this updated incorporation by reference, Alaska's federally-approved PSD program will meet the requirement to regulate NOx as a precursor to ozone. Therefore, EPA is proposing to approve the portion of Alaska's November 19, 2010, SIP revision that updates the incorporation by reference dates for 40 CFR 51.166 and 40 CFR part 52 as revised as of August 2, 2010, at 18 AAC 50.040(h) for purposes of the four definitions listed above. EPA is also proposing to approve the parts of 18 AAC 50.990 which also reference these federal definitions: 18 AAC 50.990(52) ''major stationary source,'' 18 AAC 50.990(53) ''major modification,'' and 18 AAC 50.990(92) ''regulated NSR pollutant.'' As a result, EPA is proposing to approve the Alaska SIP as meeting the requirements of 110(a)(2)(C) as they relate to PSD for the 1997 8-hour ozone standard, conditioned upon the approval of the SIP revisions pertaining to the PSD definitions identified above.

EPA is also proposing to approve Alaska's SIP for the 1997 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements for major sources. EPA most recently approved changes to Alaska's NSR program, including NSR Reform, on August 14, 2007 (72 FR 45378).

Alaska's SIP-approved minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates ozone and its precursors. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources. Based on the above analysis, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

110(a)(2)(D): Interstate Transport

Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. As noted above, this action does not address the requirements of 110(a)(2)(D)(i) for the 8-hour ozone NAAQS, which were approved by EPA on October 15, 2008 (73 FR 60955). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). In general, ADEC incorporates by reference the federal PSD rules at 40 CFR 52.21. In some cases, ADEC 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. At 18 AAC 50.306(b), Alaska's federally-approved SIP incorporates by reference 40 CFR 51.166(q)(2), with certain modifications, to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by the emissions of sources subject to PSD.

As a result, Alaska's PSD regulations provide for notice consistent with the requirements of the EPA PSD program. The state also has no pending obligations under section 115 or 126(b) of the Act. Therefore, EPA is proposing to approve the Alaska SIP as meeting the requirements of CAA Section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

Alaska's submittal: Alaska's SIP submittal certifies that ADEC maintains adequate personnel, funding, and authority to implement the SIP. Alaska refers to existing SIP provisions to address this infrastructure element. Please see the TSD in this action for a detailed description. Specifically, Alaska refers to AS 46.14.030 ''State Air Quality Plan'' which provides ADEC the statutory authority to act for the state in any negotiations related to the state air quality control plan developed under the Clean Air Act and provides authority for ADEC to adopt regulations necessary to implement the SIP. 18 AAC 50.030 ''State Air Quality Control Plan'' provides the regulatory authority to implement and enforce the SIP.

With regards to CAA section 128 requirements, Alaska's submittal states that ADEC is submitting existing state regulations for approval into the SIP for purposes of meeting CAA 128. Specifically, Alaska submitted Title 2—Administration; Chapter 50—Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying; Article 1—Public Official Financial Disclosure (2 AAC 50.010—2 AAC 50.200) and Title 9—Law; Chapter 52—Executive Branch Code of Ethics (9 AAC 52.010—9 AAC 52.990). Copies of these regulations are included in the March 2, 2012 SIP revision and are being adopted into the Alaska SIP for purposes of meeting CAA 128, through the parallel process previously described. ADEC states it is submitting these regulations to meet CAA 110(a)(2)(E) and CAA 128 for this CAA Section 110(a)(1) and (2) infrastructure certification and for all future infrastructure certifications.

There are no relevant air quality boards in Alaska, however, the ADEC commissioner, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually by March 15th of each year with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office. Alaska's Public Officials Financial Disclosure Forms and links to Alaska's financial disclosure regulations can be found at the APOC Web site: *http://doe.alaska.gov/apoc/home.html.*

With regard to assurances that the state has responsibility for ensuring adequate implementation of the plan where the state has relied on local or regional government agencies, Alaska states in its submittal that ADEC insures local programs have adequate resources and documents this in the appropriate SIP section. Statutory authority for establishing local air pollution control programs is found at AS 46.14.400 ''Local Air Quality Control Programs.'' In addition, ADEC's submittal states it provides technical assistance and regulatory oversight to the Municipality of Anchorage (MOA), Fairbanks North Star Borough (FNSB) and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the MOA and FNSB that allows them to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the MOA and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the air-shed common to the two jurisdictions. In addition, ADEC indicates the department works closely with local agencies on nonattainment plans.

EPA analysis: The above-listed laws and regulations provide Alaska with adequate authority to carry out SIP obligations with respect to the 1997 8-hour ozone NAAQS. Alaska receives sections 103 and 105 grant funds from EPA and provides state matching funds necessary to carry out Alaska's SIP requirements. Alaska has no state boards responsible for approving air permits or enforcement orders in Alaska. However, the ADEC commissioner, as head of an executive agency that approves permits and enforcement orders, must disclose potential conflicts of interest as required by CAA section 128. In Alaska's March 2, 2012 SIP revision, Alaska submitted conflict of interest disclosure and ethics regulations (2 AAC 50.010–50.200 and 9 AAC 52.010—9 AAC 52.990) for purposes of meeting the infrastructure requirement to comply with CAA section 128. EPA has reviewed these regulations and is proposing to approve the Alaska submittal as meeting the requirements of CAA section 128 and CAA section 110(a)(2)(E)(ii). Finally, Alaska's March 2, 2012 submittal provides assurances of adequate state authority when relying on local agencies to implement certain provisions of the SIP. Therefore EPA is proposing to find that Alaska's SIP meets the requirements of CAA section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

Alaska's submittal: Alaska's SIP submittal asserts that ADEC has general statutory authority to regulate stationary sources via an air permitting program which includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. Alaska's submittal states ADEC has regulatory authority to determine compliance with these statutes via information requests and ambient air quality investigations. Monitoring protocols and test methods for stationary sources have been adopted by reference including the federal reference and interpretation methods for ozone.

Alaska's submittal states the Alaska PSD/NSR program was originally approved on February 16, 1995 (60 FR 8943) and most recently approved on August 14, 2007 (72 FR 45378). Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis. Alaska refers to specific laws and regulations in the federally-approved SIP which are

described in detail in the TSD in the docket for this action.

EPA analysis: The provisions cited by Alaska provide for monitoring, recordkeeping and reporting requirements for sources subject to major source permitting. EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Prior to that, EPA approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). As noted above, EPA is proposing to concurrently approve portions of a SIP revision submitted to EPA by ADEC on November 19, 2010, which update the Alaska PSD program to regulate NOx as a precursor to ozone. Alaska also requires minor sources subject to permitting under 18 AAC 50 Article 5 to install, use and maintain monitoring equipment, sample emissions according to prescribed methods and procedures, provide source test reports, monitoring data, and emissions data, keep data and make periodic reports to ADEC. Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

110(a)(2)(G): Emergency Episodes

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Alaska's submittal: The Alaska submittal cites air quality laws and regulations which provide authority to adopt air quality regulations to control, prevent, and abate air pollution, including emission control regulations and stationary source monitoring and reporting requirements. Please refer to the TSD in this action for a detailed discussion. The Alaska submittal also cites provisions which provide ADEC with authority to act during air episodes and advisories. The submittal also indicates that three major municipalities in Alaska (Municipality of Anchorage, Fairbanks North Star Borough, and Juneau) also have ordinances, codes, or regulations that enable them to declare emergencies in the case of poor air quality. ADEC personnel remain in close contact with each municipality when an air emergency is declared, assisting with air monitoring and analysis, and implementing safety and control measures, as needed.

EPA analysis: Alaska's statute AS 46.03.820 ''Emergency Powers'' provides for emergency order authority consistent with CAA section 303. As noted in EPA's 2007 Guidance, the significant harm level for the 8-hour ozone NAAQS shall remain unchanged at 0.60 ppm ozone, 2 hour average, as indicated in 40 CFR 51.151. EPA believes that the existing ozone-related provisions of 40 CFR part 51, subpart H remain appropriate. Alaska's SIP-approved regulations at 18 AAC 50.245 are consistent with the requirements of 40 CFR 51.151. Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

Alaska's submittal: Alaska's SIP submittal refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) and AS 46.14.010(a). Alaska's submittal also refers to regulatory authority to implement provisions of the Clean Air Act at 18 AAC 50.010. ADEC states the department strives to establish regulations and update Alaska's SIP in a timely fashion as new NAAQS are promulgated by EPA. Please see the TSD in the docket for this action for a detailed description.

EPA analysis: EPA believes that the provision cited by Alaska provide the state with the requisite authority to update the SIP, and as a matter of practice, Alaska regularly updates the SIP to incorporate changes to the NAAQS and other federal regulatory changes. EPA approved numerous changes to Alaska's SIP on February 5, 2007 (72 FR 5232) which included adoption by reference of updated EPA rules. EPA most recently approved changes to Alaska's SIP on February 9, 2011, to update the state's PSD program to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in section 110(a)(2) not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As discussed earlier, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment NSR or section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation. Section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, Section 110(a)(2)(J) requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Alaska's submittal: Alaska's SIP submittal refers to statutory authority to consult and cooperate with officials of local governments, state and federal agencies, and non-profit groups found at AS 46.030.020(3), (8). Please see the TSD in the docket for this action for a detailed description. Alaska's submittal states that municipalities and local air quality districts seeking approval for a local air quality control program shall enter into a cooperative agreement with ADEC according to AS 46.14.400(d). ADEC can adopt new CAA regulations only after a public hearing as per AS 46.14.010(a). In addition, Alaska's submittal states that public notice and public hearing regulations for SIP submittals and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, Alaska's

submittal also includes reference to the state's PSD/NSR program originally approved on February 16, 1995 (60 FR 8943), and most recently approved on August 14, 2007 (72 FR 45378). The submittal states that Alaska's PSD program implements the 1997 ozone NAAQS and relevant requirements of the phase 2 ozone implementation rule. Alaska submitted its Regional Haze SIP on April 4, 2011, to meet the requirements of 40 CFR 51.308.

EPA analysis: EPA finds that Alaska's SIP contains provisions for consulting with government officials as specified in CAA 121. ADEC routinely coordinates with local governments, states, federal land managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. Alaska regularly participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the U.S. EPA whose purpose is to understand current and evolving regional air quality issues in the West. EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for consultation with government officials for the 1997 8-hour ozone NAAQS.

ADEC is a partner in EPA's AIRNOW and Enviroflash Air Quality Alert programs. Alaska provides the daily air quality index to the public on their Web site at *https://fortress.wa.gov/ecy/aaqm/Default.htm* and provides air quality advisory information at *https://myalaska.state.ak.us/dec/air/airtoolsweb/Advisories.aspx.* ADEC also provides guidelines on how to minimize air quality impacts from open burning and how residents can protect themselves from the health effects of wildfires. EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for public notification for the 1997 8-hour ozone NAAQS.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, EPA has evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting. EPA most recently approved changes to Alaska's PSD program on February 9, 2011, to reflect changes to the federal PSD program relating to the permitting of greenhouse gas emissions (76 FR 7116). EPA also approved revisions to Alaska's PSD program on August 14, 2007 (72 FR 45378). As described above, EPA is proposing in this action to approve portions of a SIP revision submitted by ADEC on November 19, 2010, which updates Alaska's federally-approved SIP to regulate NO_X as a precursor to ozone. Alaska has no nonattainment areas for the 1997 8-hour ozone standard. EPA is also proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for PSD for the 1997 8-hour ozone NAAQS.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation triggered under section 110(a)(2)(J) when a new NAAQS becomes effective. As a result of the above analysis, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

Section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Alaska's submittal: Alaska's SIP submittal states that air quality modeling is conducted under 18 AAC 50.215(b), ambient air quality analysis methods. Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040(f). This regulation allows some provisions to exclude concentrations attributable to temporary construction activity for a new or modified source, or to new sources outside the United States. Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020.

EPA analysis: EPA previously approved Alaska's regulations on air quality modeling into the SIP. We most recently approved 18 AAC 50.215 ''Ambient Air Quality Analysis Methods'' (except (a)(3)) and 18 AAC 50.040(f) which incorporates by reference EPA regulations at 40 CFR part 51, appendix W (Guidelines on Air Quality Models) revised as of July 1, 2004, on September 13, 2007 (72 FR 45378). While Alaska has no nonattainment areas for the 1997 ozone standard, Alaska has submitted modeling data to EPA related to other pollutants. For example, Alaska submitted the Fairbanks Carbon Monoxide Maintenance Plan to EPA on June 21, 2004, supported by air quality modeling. The maintenance plan and supporting modeling was approved by EPA as a SIP revision on July 27, 2004 (69 FR 44605). Therefore, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

110(a)(2)(L): Permitting Fees

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the state's title V operating permit program.

Alaska's submittal: Alaska's SIP submittal states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 and AS 46.14.250. The permit fees for Title V stationary sources are assessed and collected by the Air Permits Program according to 18 AAC Article 4. The Air Permits Program is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410). The submittal states that ADEC's most recent emission fee evaluation report was completed in October 2010 and that the next emission fee review is scheduled for 2014.

EPA analysis: EPA fully approved Alaska's title V program on July 26, 2001 (66 FR 38940) with an effective data of September 24, 2001. EPA regularly reviews ADEC's title V fee program to determine if the fee structure is adequate to pay for the program and assure the funding is only going toward title V implementation. While Alaska's operating permit program is not formally approved into the state's SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Alaska's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR

70.9(b)(2)(i). Accordingly, EPA is proposing to approve Alaska's SIP as meeting the requirements of CAA Section 110(a)(2)(L) for the 1997 8-hour ozone NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Alaska's submittal: Alaska's SIP submittal cities AS 46.03.020 ''Powers of the Department'' which provides authority to ADEC to consult with and cooperate with ''officials and representatives of any nonprofit corporation or organization in the state'' and ''persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state.'' This section also provides authority to ADEC to ''advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter.'' Please see the TSD in the docket for this action for a detailed description.

EPA analysis: AS 46.03.020 provides authority for local and regional authorities to participate and consult in the SIP development process. In addition, AS 46.14.400(d) provides authority for local air quality control programs and requires cooperative agreements between ADEC and local air quality control programs that specify the respective duties, funding, enforcement responsibilities, and procedures. Therefore EPA proposes to find that Alaska's SIP meets the requirements of CAA Section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

VI. Scope of Proposed Action

The SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. EPA will continue to implement the CAA in Indian Country in Alaska because ADEC has not adequately demonstrated authority over sources and activities located within the exterior boundaries of the Annette Island Reserve and other areas of Indian Country in Alaska.

VII. Proposed Action

EPA is proposing to approve the SIP submittal from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Alaska for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. EPA is proposing to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA is proposing to approve revisions submitted by the state to revise the Alaska SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, federal Prevention of Significant Deterioration (PSD) program changes to regulate NO_X as a precursor to ozone, and regulations to meet CAA section 128. This action is being taken under section 110 and part C of the CAA.

VIII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 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, 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 Alaska, and 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, Incorporation by reference, 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: March 9, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–6923 Filed 3–21–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R02–OAR–2012–0032, FRL -9651–4]

Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution, submitted to EPA by the Puerto Rico Environmental Quality Board (PREQB) on July 13, 2011. This action proposes to approve revisions to Rules 102, 111, 115, 116, 609 and Appendix A. Generally the revisions to the regulations involve administrative