

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2018-0834; FRL-9994-32-Region 10]

**Air Plan Approval; AK; Updates to Curtailment Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of revisions to the Alaska State Implementation Plan (SIP) that were submitted by the Alaska Department of Environmental Conservation (ADEC). These revisions update and strengthen ADEC's regulation of residential wood smoke emissions, especially the curtailment program as it applies to the Fairbanks fine particulate matter nonattainment area. No comments were received on this action.

**DATES:** This action is effective on July 5, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2018-0834. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Justin Spenillo at (206) 553-6125, [spenillo.justin@epa.gov](mailto:spenillo.justin@epa.gov), or Attn: Justin Spenillo, Air and Radiation Division, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

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- I. Background
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**I. Background**

On November 28, 2018, ADEC submitted revisions to specific air quality regulations for approval into the federally-enforceable Alaska SIP. The submission includes changes to Alaska Administrative Code Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50), adopted December 8, 2017, and state-effective January 11, 2018. This action addresses a portion of the submitted revisions, specifically those that update and strengthen wood smoke curtailment regulations that apply in the Fairbanks North Star Borough fine particulate matter (PM<sub>2.5</sub>) nonattainment area.<sup>1</sup> EPA approved a prior version of Alaska's wood smoke curtailment regulations for the Fairbanks North Star Borough fine particulate matter (PM<sub>2.5</sub>) nonattainment area on September 8, 2017 (82 FR 42457).

On March 22, 2019, we proposed to approve the submitted updates to solid fuel-fired heating device visible emission standards at 18 AAC 50.075(e), and revisions to the Fairbanks Emergency Episode Plan and associated appendix, state-effective January 11, 2018 (84 10750).<sup>2</sup> We intend to take

action on the remainder of the submission in a separate, future action.<sup>3</sup> Please see our proposed rulemaking for further explanation and the basis for our approval (84 FR 10750, March 22, 2019). The comment period for our proposed rulemaking closed on April 22, 2019. No comments were received on this action.

**II. EPA's Final Action**

The EPA is approving and incorporating by reference the following revised rule into the Alaska SIP at 40 CFR 52.70(c):

- 18 AAC 50.075(e) Solid Fuel-fired Heating Device Visible Emission Standards, state effective January 12, 2018.

The EPA is approving, but not incorporating by reference, the following revised sections of the Alaska State Air Quality Control Plan:

- Volume II, Section III.D.5.11 Fairbanks Emergency Episode Plan, state effective January 12, 2018; and
- Pages 68 through 84 of Volume III, Appendix III.D.5.12: Appendix to Volume II. Analysis of Problems, Control Actions; Section III. Area-wide Pollutant Control Program; D. Particulate Matter; 5. Fairbanks North Star Borough PM<sub>2.5</sub> Control Plan, state effective January 12, 2018.

As described previously, the EPA is approving these revisions as SIP strengthening. These revisions support the state's ability to reduce and manage emissions in the Fairbanks PM<sub>2.5</sub> nonattainment area. This action does not alter our prior approval of the plan as meeting Moderate area requirements and we are not making any findings with respect to the Serious plan requirements triggered upon reclassification. As a result of today's final action, violations of any air quality episode called pursuant to 18 AAC 50.075(e) at the levels and conditions specified in Table 1 and Table 2, below, are federally enforceable.

TABLE 1—ADEC'S TABLE 5.11-1 AIR QUALITY EPISODE THRESHOLDS AND EXCEPTIONS

Episode feature	Stage 1 air alert	Stage 2 air alert
PM <sub>2.5</sub> Threshold micrograms per cubic meter, (ug/m <sup>3</sup> ).	25 .....	35.
Exceptions During a Power Outage .....	Yes .....	Yes.

<sup>1</sup> See 40 CFR 81.302.

<sup>2</sup> The Fairbanks Emergency Episode Plan is in Volume II: Section III.D.5.11 and is codified as a matter of State law at 18 AAC 50.030(a). The

associated appendix to the plan is in Volume III: Appendix III.D.5.12 and includes the Fairbanks North Star Borough Ordinance No. 2017-18 and No. 2017-44, codified as a matter of State law at 18 AAC 50.030(a).

<sup>3</sup> The remainder of the submission addresses revisions to 18 AAC 50.030(b), 18 AAC 50.075(f), 18 AAC 50.077, 18 AAC 50.079, and 18 AAC 50.990.

TABLE 2—ADEC’S TABLE 5.11–2 PM<sub>2.5</sub> AIR QUALITY EPISODE APPLIANCE-SPECIFIC OR WAIVER-SPECIFIC ACTIONS

Appliance type or waiver type	Stage 1 air alert	Stage 2 air alert
No other adequate source of heat (NOASH) designation, meets other requirements in 21.28.060.	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).
Approved Stage 1 Waiver, meets other requirements in 21.28.060.	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).	Operation Prohibited.
Wood Stoves	Operation Prohibited	Operation Prohibited.
Coal Stoves	Operation Prohibited	Operation Prohibited.
Wood-fired hydronic heaters	Operation Prohibited	Operation Prohibited.
Wood-fired Furnaces	Operation Prohibited	Operation Prohibited.
Coal-fired Hydronic Heaters	Operation Prohibited	Operation Prohibited.
Coal-fired Furnaces	Operation Prohibited	Operation Prohibited.
Fireplace Inserts	Operation Prohibited	Operation Prohibited.
Pellet Fuel Burning Appliances	Operation Prohibited	Operation Prohibited.
Masonry Heaters	Operation Prohibited	Operation Prohibited.
Cook Stoves	Operation Prohibited	Operation Prohibited.
Fireplaces	Operation Prohibited	Operation Prohibited.
Waste Oil Burning Appliances	Operation Prohibited	Operation Prohibited.
Non-Permitted Outdoor Incinerators, Burn Barrels.	Operation Prohibited	Operation Prohibited.
Campfires, Bonfires, Ceremonial Fires, Fire pits	Voluntary Curtailment	Operation Prohibited.
Cook Stoves	Operation Prohibited	Operation Prohibited.

**III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in Section III of this action, and the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

**IV. Statutory and Executive Order Reviews**

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

it does not involve technical standards; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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). Therefore, Executive Order 13175 does not apply to this action.

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).

<sup>4</sup> See 62 FR 27968 (May 22, 1997).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2019. 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, Incorporation by

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

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

Dated: May 15, 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:

■ a. The table in paragraph (c) is amended by revising entry 18 AAC 50.075; and

■ b. The table in paragraph (e) is amended by adding, at the end of the table, an undesignated heading entitled “Recently-Approved Plans” and entries “II.III.D.5.11” and “III.III.D.5.12”.

The revision and additions read as follows:

**§ 52.70 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED ALASKA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50)</b>				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
18 AAC 50.075	Solid Fuel-fired Heating Device Visible Emission Standards.	1/12/2018	6/5/2019, [Insert <b>Federal Register</b> citation].	Except (d)(2) and (f).
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\* \* \* \* \* (e) \* \* \*

**EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanations
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
<b>Recently—Approved Plans</b>				
II.III.D.5.11 Fairbanks Emergency Episode Plan.	Fairbanks North Star Borough	11/28/2018	6/5/2019, [Insert <b>Federal Register</b> citation].	Revision to II.III.D.5.
III.III.D.5.12 Appendix to Volume II. Section III.D.5.	Fairbanks North Star Borough	11/28/2018	6/5/2019, [Insert <b>Federal Register</b> citation].	Revision to pages 68 through 84 of III.III.D.5.