

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R10-OAR-2021-0060; FRL-8909-02-R10]

Air Plan Approval; AK, Fairbanks North Star Borough; 2006 24-Hour PM_{2.5} NAAQS Serious Area Plan**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving parts of state implementation plan (SIP) submissions, submitted by the State of Alaska (Alaska or the State) to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in the Fairbanks North Star Borough PM_{2.5} nonattainment area (Fairbanks PM_{2.5} Nonattainment Area). The EPA is also approving rule revisions and an associated air quality control plan chapter submitted by Alaska into the federally-approved SIP. Alaska made these submissions on October 25, 2018, November 28, 2018, December 13, 2019, (Fairbanks Serious Plan) and December 15, 2020.

DATES: This action is effective on October 25, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2021-0060. 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 (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 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: Matthew Jentgen, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA, 98101, (206) 553-0340, jentgen.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to EPA.

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I. Background

On February 22, 2021, the EPA published its proposal to approve parts of the Fairbanks Serious Plan and associated SIP revisions (86 FR 10511). Specifically, we proposed to approve the submitted revisions to the Alaska SIP as meeting the base year emissions inventory and precursor demonstration requirements triggered for the Fairbanks PM_{2.5} Nonattainment Area upon reclassification of the area to Serious on May 10, 2017 (82 FR 21711). The EPA also proposed to approve as SIP-strengthening the submitted sections of the Alaska Air Quality Control Plan for the Fairbanks PM_{2.5} Nonattainment Area, state effective January 8, 2020, related to the Emergency Episode Plan. The EPA also proposed to approve and incorporate by reference as SIP-strengthening the submitted regulatory changes to Alaska Administrative Code Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50). The reasons for our proposed approval are described in the EPA’s February 22, 2021, proposal and will not be restated here (86 FR 10511).

II. Public Comments and EPA Responses

The EPA provided a 30-day period for the public to comment on the proposed action that ended on March 24, 2021. We received 19 public comments. The public comments can be found in the docket for this action. Each of the 19 comments raise concerns about a suite of measures Alaska included under 18 AAC 50.077 that prohibit the installation, reinstallation, sale, lease, distribution, or conveyance of wood-fired heating devices in the Fairbanks PM_{2.5} Nonattainment Area.

Comment 1: The Hearth, Patio & Barbecue Association (HPBA), Blaze King Industries, Inc., Jotul, Kozy Heat Fireplaces, Kuma Stoves, Inc., Woodstock Soapstone Company, Myren Consulting, Inc., Rais, Fireplace Products International Ltd. (FPI), Travis Industries, United States Stove Company, and two anonymous commenters raise concerns about the State’s submitted revisions to heating device requirements established in regulation at 18 AAC 50.077. The current SIP-approved heating device requirements in this rule place restrictions on wood-fired hydronic heaters and wood-fired heating devices with a manufacturer-rated heat output

capacity of less than 350,000 British Thermal Units (BTUs) per hour and prohibit the installation, reinstallation, sale, lease, distribution, or conveyance of a woodstove in the area, unless:

- The EPA has certified the device under 40 CFR 60.533; and
- an EPA-accredited lab has tested the woodstove and determined it meets an emissions limit of 2.5 grams per hour, and
 - the test results were obtained using EPA New Source Performance Standard (NSPS) for new residential wood heaters test procedures (40 CFR part 60, appendix A, Methods 28, 28A, and 28R), or alternative cordwood methods that have been approved by the EPA, and

- the test results were obtained using EPA NSPS emissions concentration measurement procedures (40 CFR part 60, appendix A, Methods 5G and 5H).

The submitted SIP revisions tighten the applicable woodstove emissions limit from 2.5 grams/hour to 2.0 grams/hour, require that alternative methods used to test a woodstove be approved by both the EPA and the Alaska Department of Environmental Conservation (ADEC), and specify that during testing, a woodstove must not emit more than 4 grams/hour or 6 grams/hour depending on the test methods and measurement procedures used. Specifically, the submissions revise the regulation at 18 AAC 50.077 to prohibit the installation, reinstallation, sale, lease, distribution, or conveyance of a woodstove in the area, unless:¹

- The EPA has certified the device under 40 CFR 60.533, and
- an EPA-accredited lab has tested the woodstove and determined it meets an emission limit of 2.0 grams per hour, and
 - the test results were obtained using EPA NSPS test procedures (Methods 28, 28A, or 28R), or alternative test methods, including broadly applicable test methods, if approved by both EPA and the Alaska Department of Environmental Conservation; and
 - the test results were obtained using EPA NSPS emission concentration measurement procedures (Methods 5G and 5H); and
 - After September 1, 2020, the test results must demonstrate: (1) No rolling

¹ Other components of 18 AAC 50.077 were largely retained, such as the requirements for woodstoves and pellet stoves under 18 AAC 50.077(c) applying to devices with a manufacturer-rated heat output capacity of less than 350,000 Btu per hour, and that the EPA certification should be calculated in grams per hour and approved by the department with supporting data.

60-minute period exceeds 4 grams per hour using a tapered element oscillating microbalance (TEOM) following procedures set out in the Northeast States for Coordinated Air Use Management (NESCAUM) Standard Operating Procedures; or (2) no reported valid test run measurement (one-hour filter data) exceeds 6 grams per hour from the EPA certification report for the device. See 18 AAC 50.077(c)(b)(ii).

The commenters assert that the new test requirements at 18 AAC 50.077(c)(b)(ii) are not reliable indicators of device performance, and that there is insufficient information to approve the use of these test requirements. One commenter, Jotul, states that the one-hour emissions limit established by ADEC is completely arbitrary, and Jotul considers it of utmost importance that any new regulations be developed and promulgated based on sound scientific principles combined with robust data to support the conclusions for establishing new emissions limits and testing protocol.

Hearth & Home Technologies, Inc., Jotul, Kozy Heat Fireplaces, Woodstock Soapstone Company, Myren Consulting, Inc., FPI, Travis Industries, and United States Stove Company do not support relying on the TEOM method. According to these commenters, TEOM is a new test that has not undergone significant testing and research and relies on NESCAUM guidance documents that have not undergone peer review.

Blaze King Industries, Inc. and Woodstone Soapstone Company also note the difficulty working with the TEOM device, which might jeopardize the potential for a qualified sample catch and invalidate an otherwise valid test run. Woodstone Soapstone Company notes that there is no definitive method that correlates results captured from a TEOM to results from Method 28 (EPA-approved woodstove device test method). Kozy Heat Fireplaces states that the TEOM equipment has not been tested or incorporated into the Federal certification process and has shown significant variances in testing. An anonymous commenter notes that different stoves burn differently and the total amount of emissions over a burn cycle should be the relevant metric, rather than a one-hour measurement. Myren Consulting states that the 6 grams per hour limit is arbitrary and capricious because it does not differentiate between the two applicable test methods, EPA M28/28R and American Society for Testing and Materials (ASTM) E3053, which have

drastically different operating and fueling protocols. Myren Consulting also notes that the 6 gram per hour limit is being applied in an ex post facto manner and that, had manufacturers known about this limit in advance, they would have had the opportunity to change their woodstove designs and bring their stoves into compliance.

Further, HPBA, Innovative Hearth Products (IHP), Kozy Heat Fireplaces, Woodstock Soapstone Company, Myren Consulting, Inc., New Buck Corporation, Rais, FPI, Travis Industries, United States Stove Company, and four anonymous commenters assert that the additional device requirements for new woodstoves and pellet stoves, included in 18 AAC 50.077(c)(b)(ii), are inconsistent with the Federal NSPS requirements and that the hourly measurements depart from the weighted average emissions limit methodology relied on by the EPA's NSPS. IHP states that individual test runs are conducted as part of a calculation that establishes an overall weighted emissions average that is then compared to standards that have been developed as per ASTM methods. The commenters state that individual test runs cannot in and of themselves establish a weighted average and therefore cannot determine the overall usage expectancy of any multi-rate appliance and that any such conjectures by the State of Alaska are erroneous and without merit.

Blaze King Industries, Inc. asserts that the one-hour filter pull requirement for all test runs has eliminated one of the cleanest burning woodstoves (30.2 series by Blaze King), based on an EPA weighted average. Blaze King Industries, Inc. provides data to support the contention that, during one woodstove device test, the wood did not collapse uniformly, with one piece shifting slightly forward, which resulted in a one-hour filter pull of 8 grams per hour. Blaze King Industries, Inc. states other stoves that are approved for sale in the Fairbanks PM_{2.5} Nonattainment Area have weighted emissions averages more than twice that of the particular Blaze King device. Woodstock Soapstone Company and Rais also provide an example each of a woodstove that has one of the lowest weighted average emissions of all EPA-certified woodstoves, but due to one test run exceeding 6 grams per hour, would not be approved for sale in the Fairbanks PM_{2.5} Nonattainment Area.

Another anonymous commenter states that non-catalytic stoves are more user-friendly and require less maintenance, but they are more likely to be rejected under this one-hour requirement because non-catalytic stoves require

more heat to burn cleanly, and they take time to heat up and start burning cleanly. Hearth & Home Technologies, Inc. asserts that the clearest path to cleaner air in the Fairbanks PM_{2.5} Nonattainment Area is by removing older, pre-1988 wood-burning devices, not by prohibiting certain EPA-certified devices that do not meet Alaska's revised requirements in 18 AAC 50.077.

Response 1: For the ensuing reasons, the comments do not demonstrate that approval of Alaska's revisions to 18 AAC 50.077 is inconsistent with the CAA; therefore, the EPA is finalizing its approval as proposed. Regarding Alaska's rule revisions for wood-fired heating device emission standards under 18 AAC 50.077, the EPA proposed to find that the revisions submitted by ADEC are more stringent than the current EPA-approved rules. For the reasons stated in our proposal and in this response, we find that Alaska was not unreasonable in requiring additional testing requirements as a method of regulating the installation and operation of woodstoves. As stated in a prior EPA action on November 27, 2018 (83 FR 60769), approving the Alaska SIP as meeting specific infrastructure requirements for the 1997, 2006, and 2012 PM_{2.5} NAAQS, the EPA disagrees with the premise that states cannot regulate a source category more stringently than may be required in a Federal regulation. The EPA's role is to review and approve state choices if they meet the CAA requirements. There is nothing in the CAA that prevents SIP provisions from being more stringent than Federal NSPS standards. To the contrary, CAA section 116 explicitly authorizes states to regulate sources more stringently than the EPA does through Federal regulations. Thus, the fact that 18 AAC 50.077 is more stringent than the NSPS for new residential wood heaters does not impact the approvability of these control measures as SIP-strengthening.

In addition, ADEC addressed similar comments during the State's public comment period on the SIP revisions. In the Alaska Department of Environmental Conservation's Response to Comments on the proposed regulations (ADEC Response to Comments),² ADEC asserted that the purpose of these additional testing requirements is to better reflect actual emissions of wood heaters in the Fairbanks PM_{2.5} Nonattainment Area.

² Alaska Department of Environmental Conservation, Response to Comments on May 14, 2019, Proposed Regulations, November 19, 2019. Pages 37–38, 51–53.

ADEC asserted that the current test method for woodstoves that results in the certification value (grams of PM_{2.5} per hour) averages emissions over four steady-state runs. The values from each of these runs is an average emission rate over the time it takes to burn 100% of the full load of wood used for each run. This approach translates into a certification value that is an average of an average. ADEC stated that averaging results multiple times minimizes emission rates, which results in certification values that may vastly under predict actual in-use emission rates and does not reflect the fuel loading events that in field use may occur multiple times per day. Further, ADEC stated that real-time PM_{2.5} measurements collected from EPA certification tests have shown that the maximum emission rate occurs within two hours of the test period, and typically, on average, appliances spend approximately 50% of the certification testing time in the period known as the charcoal tail, where virtually no emissions occur, and in some cases filters may experience particulate loss due to warm dry air blowing through the filter. While this test method approach differs from the NSPS for new residential wood heaters, EPA finds ADEC's rationale for the revisions to 18 AAC 50.077 is reasonable and a rational attempt to strengthen rules for the residential space heating source category.

With respect to the inclusion of the TEOM measurement requirement, ADEC states that the goal was to achieve a 1.0 grams per hour emission limit in practice, taking into consideration the variability of emissions when burning cordwood. After reviewing public comments submitted during the State's public comment period, ADEC amended the final regulation to provide an alternative to the TEOM test method while still providing what it considered to be an equivalent, if not better, air quality result than a 1.0 grams per hour average emission limit. The final regulation stipulates that manufacturers may provide the TEOM data as ADEC originally proposed, with the additional specificity that no rolling 60-minute period may exceed 4.0 grams per hour, or alternatively, by utilizing existing EPA certification test data showing that no valid one-hour filter measurement from the certifying report to EPA is greater than 6.0 grams per hour.

ADEC asserted that, while this limit is three times the final ADEC standard (certification value of 2.0 grams per hour or less), the limit will apply to all woodstoves being installed, reinstalled, sold, leased, distributed, or conveyed in

the nonattainment area (not just non-catalytic devices). Due to a number of devices expected to exceed this limit based on the revised test method, the result will be fewer devices available for installation, sale, lease, distribution, or conveyance in the area. ADEC noted this approach is designed to ensure that performance of the devices under more real-world operations will be more consistent because the emissions limit value is not an average. As an example, ADEC found devices that meet the 1.0 grams per hour emissions limit (adopted in Missoula County, Montana), but that exceed the one-hour filter measurement of 6.0 grams per hour.

Further, ADEC noted that, while the TEOM is a new approach for wood heater device certification testing, it has been incorporated into a standard test method (ASTM D6831–11) for stack gas testing. ADEC believes the TEOM test is a valuable tool that should be used in future device certification test requirements and has maintained it as one option for meeting testing requirements in the final regulation. ADEC stated that it is specifying use of the TEOM and its alternative one-hour filter measurement is based on the ADEC's analysis of over 60 EPA approved certification reports, the vast majority of the tests reviewed were for EPA Step 2 certification.

Thus, Alaska developed and implemented additional requirements for wood-fired heating devices, a 2.0 grams per hour limit for all wood-fired devices and hourly requirements measured by a TEOM device or during the EPA certification process, with the intention to reduce the emissions from the home heating source category, the source category with the highest PM_{2.5} emissions in the Fairbanks PM_{2.5} Nonattainment Area. EPA has determined that Alaska's revisions to 18 AAC 50.077 are reasonable and strengthen the SIP with respect to the regulation of emissions from the residential space heating source category.

Comment 2: HPBA, Kozy Heat Fireplaces, and Travis Industries assert that the one-hour filter alternative is not compatible with woodstove emissions and the Federal air quality standard that the EPA based on data averaged over 24 hours, noting that the Federal air quality standard is not a "peaking" standard that is violated by a single episodic, one-hour reading. Thus, the commenters assert that the EPA was proposing to approve this metric without any explanation in the record of its relevance to the nonattainment issues experienced in the Fairbanks PM_{2.5} Nonattainment Area.

Response 2: The EPA disagrees with the commenters. First, the EPA disagrees with the commenters' assertion that device requirements must be directly tied to the Federal air quality standard. Overall, the EPA notes that PM_{2.5} is a complex and highly variable mixture of particles and gases. The EPA's PM_{2.5} Implementation Rule (81 FR 58010, August 24, 2016) recommends that states should base potential control measures in part on an analysis of emissions inventory data summaries, fine particle speciation monitoring data, and source apportionment air quality modeling data. Emissions standards can have different averaging periods based on the type of source, rate of emissions, and control measure. Irrespective of the particular NAAQS, our basis for approval here is that Alaska's revisions to 18 AAC 50.077 render the SIP more stringent than the prior approved rule in terms of regulating emissions from woodstoves. The EPA finds that ADEC's rationale for why the revised 18 AAC 50.077 will reduce emissions from the residential home heating source category is reasonable.

Second, the record contains ample information showing that ADEC's revised rule will reduce emissions of direct PM_{2.5} from the residential home heating source category. The EPA evaluated ADEC's SIP submission, including the responses to similar comments in the development of the State's regulation. In ADEC's Response to Comments, ADEC noted that, under the 2015 NSPS for new residential wood heaters, the EPA required reporting of emission rates for the first hour of the test period. This data reflects the timing and emission rates typically associated with the 60-minute test requirements for particulate matter testing at all other sources (EPA Method 5). ADEC asserted that the assessment of one-hour data allows agencies to gauge performance and determine which appliances are low emitting from the start of the certification test versus those that have been able to design for long charcoal tails to minimize the peak emissions. ADEC additionally stated that one of the reasons for requiring the use of TEOM measurement data is to provide a more meaningful equivalency to a 1.0 grams per hour average emission limit (as adopted by Missoula County, Montana), taking into consideration the variability of emissions when burning cordwood, while still allowing a range of devices to be sold and used in the Fairbanks PM_{2.5} Nonattainment Area. Thus, the record does contain information

explaining the reason for the one-hour filter alternative.

Finally, as stated in a prior EPA action on November 27, 2018 (83 FR 60769), approving the Alaska SIP as meeting specific PM_{2.5} infrastructure requirements, states have the obligation to regulate sources as necessary to meet nonattainment area plan stringency requirements, such as reasonably and best available control measures, and the obligation to regulate sources as necessary to attain the NAAQS in a given nonattainment area. ADEC determined it was necessary to revise 18 AAC 50.077 and submitted the revisions to address Serious area planning requirements for best available control measures in the Fairbanks PM_{2.5} Nonattainment Area. While this action does not address whether the submitted revisions to 18 AAC 50.077 and other rules are sufficient to meet best available control measure requirements, we explained in our proposed action how the revisions strengthen the SIP. The comments do not demonstrate that Alaska's revisions to 18 AAC 50.077 or rationale for these revisions are unreasonable, and EPA is thus finalizing approval of 18 AAC 50.077 as proposed.

Comment 3: HPBA, Blaze King Industries, Inc., Hearth & Home Technologies, Inc., Travis Industries, and United States Stove Company note that Fairbanks has a unique winter environment where woodstoves are only "started" once during winter and left running during entire cold season. Thus, the commenters assert that establishing a particulate emissions standard based only on the first hour of operation inaccurately represents the emissions of wood-fired heating devices in the Fairbanks PM_{2.5} Nonattainment Area. In addition, Blaze King Industries, Inc. states that woodstove users in the Fairbanks North Star Borough are unique in their use of stoves to address sub-zero climate conditions in the region. Myren Consulting states that, no matter the test method, testing of certified stoves in the test environment will not reflect conditions in the field because of differences in static pressure, that the commenter asserts will significantly affect performance in areas with colder temperatures such as in Fairbanks.

Response 3: As noted in Responses 1 and 2, ADEC revised 18 AAC 50.077 to reduce emissions from wood-fired heating devices while allowing for sale and use of a range of devices in the Fairbanks PM_{2.5} Nonattainment Area. In ADEC's Response to Comments, ADEC stated that the TEOM measurement and the one-hour filter pull data reflect more real-time particulate matter

measurements and that other test methods, based on an average of multiple test runs, may vastly under predict actual in-use emission rates and do not reflect the actual fuel loading events that may occur multiple times per day. Moreover, ADEC developed this control measure as part of its control measure analysis that incorporates the emissions inventory, speciation, and source apportionment data for the nonattainment area. Based on ADEC's SIP submission, including the responses to comments in ADEC's rulemaking process, the EPA finds that ADEC's rationale for incorporating the TEOM measurement and the one-hour filter pull data is credible and based on a robust understanding of the emissions from woodstoves. Therefore, the EPA is approving this rule revision as SIP-strengthening because the revised rule imposes requirements for woodstoves in the Fairbanks PM_{2.5} Nonattainment Area that are more stringent than the woodstove requirements in the current SIP.

Comment 4: Travis Industries asserts that the EPA must expressly state that the standards ADEC is imposing in 18 AAC 50.077 are inappropriate in other settings that do not share the Fairbanks PM_{2.5} Nonattainment Area's extreme climatic conditions.

Response 4: As specified in 18 AAC 50.077, this regulation only applies to qualifying wood-fired heating devices in areas in Alaska that are designated nonattainment for PM_{2.5}, under 18 AAC 50.015(b)(3). Currently the Fairbanks and North Pole urban area (*i.e.*, Fairbanks PM_{2.5} Nonattainment Area) is listed as the only nonattainment area in Alaska where this regulation applies. However, other state and local governments have the authority to adopt similar measures.

Comment 5: Comments by HPBA, Blaze King Industries, Inc., Kuma Stoves, Inc., IHP, Woodstock Soapstone Company, Myren Consulting, and FPI object to Alaska's authority to validate the EPA's wood-fired heating device certifications for applicability in the Fairbanks PM_{2.5} Nonattainment Area and limit the EPA-approved applicable testing methods. HPBA asserts that, under 18 AAC 50.077(c)(3)(A), ADEC can effectively veto an EPA device certification on the grounds that ADEC had not approved the same alternative test method. As an example, HPBA notes that while the EPA approved ASTM 3053 (cordwood test method), Alaska has not. These commenters state that Alaska's failure to recognize this approved test method undermines the EPA's authority. In addition, Kuma Stoves, Inc. states that the EPA should

not now, after benefitting from valuable data generated by the ASTM 3053 test method, support language that declares ASTM 3053 to be a nonrepresentative test. One anonymous commenter contends that, based on experience as a manufacturer of EPA-certified woodstoves, the ASTM 3053 test method is credible and produces consistent and reliable emissions values, and therefore rejecting this test method results in less informative testing data.

Generally, IHP states that it is onerous for a state to regulate an industry to meet any requirements that are not previously set and known before development, certification, and manufacturing of those industry products. Kozy Heat Fireplaces, Inc. states these device requirements impose new and greater costs for certification and that these costs have not been quantified by either ADEC or the EPA. IHP recommends that the EPA reject ADEC's revised requirements for woodstoves in the Alaska SIP submission as a "de facto federal standard," and in the comment encourages the State of Alaska to work with the industry to find a more complete solution. FPI also notes that, not only does ADEC not recognize the alternate test method, but it does not recognize the 2.5 grams per hour emissions limit associated with this test method. FPI asserts that dismissing this limit by setting a 2.0 grams per hour limit for cordwood without a scientific process and peer review is arbitrary.

An anonymous commenter notes that the same entities are involved in woodstove device testing certifications and accreditations as product safety testing. The commenter states that laboratories need an International Organization for Standardization (ISO) 17025 accreditation that can be renewed every two years following an official audit from the accreditor. The commenter states that proficiency testing has been put in place by the EPA as part of the ISO-17025 accreditation and all accredited laboratories should comply with the proficiency testing every two years.

Response 5: The EPA disagrees with the commenters' assertion that Alaska lacks authority to promulgate rules that are more stringent than EPA's NSPS or that otherwise limit the range of devices allowed in the area. The EPA also disagrees with the assertion that Alaska, by promulgating these rules, establishes a "de facto federal standard" and as such undermines the EPA's independent authorities to establish Federal new source performance standards. Congress gave the EPA

authority in CAA section 111 to establish performance standards for categories of new sources. Distinct from CAA section 111, Congress required in CAA section 110 that states have an overarching SIP to implement, maintain, and enforce the NAAQS. If states have designated nonattainment areas, then they must make a nonattainment plan SIP submission meeting additional specific requirements. State regulation of sources more stringently for purposes of meeting SIP requirements does not interfere or undermine the EPA's authority to regulate new sources under the CAA. With few exceptions, states are not preempted from regulating source categories more stringently and have explicit authority in CAA section 116 to do so.

The EPA disagrees with the commenters' assertion that ADEC did not consider compliance costs. In ADEC's Response to Comments, Alaska acknowledged the potential increased costs to certification testing. ADEC stated that the intention is to provide a meaningful equivalent control measure to a 1.0 grams per hour average emissions limit, while also allowing a range of devices to be sold and used in the Fairbanks PM_{2.5} Nonattainment Area. As discussed in Response 1 in this preamble, states have explicit authority to regulate a source category more stringently than may be required in a Federal regulation. The EPA's role is to review and approve state choices if they meet applicable CAA requirements. See 42 U.S.C. 7410(k) and 40 CFR 52.02(a); see also *Union Elec. Co. v. EPA*, 427 U.S. 246, 256–266 (1976) (holding that the EPA may not disapprove a state implementation plan that meets the requirements of CAA Section 110(a)(2) on the basis of technological or economic infeasibility). There is nothing in the CAA that prevents states from imposing SIP requirements that are more stringent than Federal NSPS standards.

Regarding woodstove device testing certifications and ISO–17025 accreditations, the 2015 NSPS stipulates that for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces (80 FR 13672), a test laboratory must agree to participate biennially in an independently operated proficiency testing program with no direct ties to the participating laboratories. Further, the EPA Administrator may revoke a test laboratory approval if a test laboratory has failed to participate in a proficiency testing program, in accordance with 40 CFR 60.535.

Comment 6: Central Boiler/Woodmaster objects to the provision

under 18 AAC 50.077(a) that prohibits the sale and installation of cordwood-fueled outdoor hydronic heaters in the Fairbanks PM_{2.5} Nonattainment Area. Central Boiler/Woodmaster states that these devices are not given consideration by the state based on emissions or performance like other wood heating appliances.

Response 6: Consistent with CAA requirements and the EPA's PM_{2.5} Implementation Rule, Alaska has authority to prohibit the sale and installation of devices that contribute to PM_{2.5} concentrations in the Fairbanks PM_{2.5} Nonattainment Area, such as cordwood-fueled outdoor hydronic heaters, to bring the area into attainment. We note that, under 18 AAC 50.077(b), Alaska does permit pellet-fueled wood-fired hydronic heaters for use in the Fairbanks PM_{2.5} Nonattainment Area, if specific device performance criteria meet Alaska regulations. Therefore, the EPA is finalizing the approval of 18 AAC 50.077(b) as proposed.

Comment 7: HPBA notes that while point sources (electric power plants) constitute the largest source of SO₂ emissions in the Fairbanks PM_{2.5} Nonattainment Area, ADEC, in many instances, did not require additional source-level controls on several large facilities. HPBA states that ADEC did not require installation of new control technologies for SO₂ even though the average daily emissions from these point sources are nearly three times larger than sources of directly-emitted PM_{2.5} from woodstoves.

Response 7: The EPA agrees with the commenter that the largest source category of SO₂ emissions is point sources, including electric power plants, and that SO₂ is a significant contributor to PM_{2.5} concentrations in the Fairbanks PM_{2.5} Nonattainment Area. On December 13, 2019, Alaska submitted a best available control technology (BACT) control analysis for specific point sources located in the area, including several electric power plants, as part of the Fairbanks Serious Plan. However, we consider this comment to be outside the scope of this action. In this action, the EPA is evaluating rule revisions that ADEC has adopted to address direct PM_{2.5} emissions from wood-fired heating devices. We did not propose action on the BACT Serious area planning requirements, including the issue of appropriate regulation of SO₂ emissions from point sources, as part of this action. We intend to address Alaska's best available control measures (BACM)/BACT control analysis, and any supplemental BACT control analysis submissions, in a separate action. We

encourage the commenter to resubmit the comment during the public comment period of our future action on the BACT control analysis.

Conclusion

The EPA finds that the comments do not change our proposed determination that the regulations submitted by Alaska are consistent with CAA requirements and strengthen the SIP. Therefore, we are finalizing our action as proposed.

III. Final Action

In this action, the EPA is approving a portion of the submitted revisions to the Alaska SIP as meeting the following Serious Plan required elements for the Fairbanks PM_{2.5} Nonattainment Area:

- The 2013 base year emissions inventory (CAA section 172(c)(3); 40 CFR 51.1008(b)(1)); and
- The State's PM_{2.5} precursor demonstration for NO_x and volatile organic compound (VOC) emissions (CAA section 189(e); 40 CFR 51.1006(a)).

We reiterate that Alaska's precursor analysis did not address nonattainment New Source Review (NSR) requirements. The State made the prior determination to regulate all four EPA identified legal precursors to PM_{2.5} in the nonattainment NSR regulations applicable to the Fairbanks PM_{2.5} Nonattainment Area. The EPA approved Alaska's October 25, 2018, SIP revision as meeting the nonattainment NSR requirements triggered upon reclassification of the area to Serious (August 29, 2019, 84 FR 45419).

Specifically, the EPA is approving the submitted sections of the Alaska Air Quality Control Plan for the Fairbanks PM_{2.5} Nonattainment Area, State effective January 8, 2020:

- Volume II Section III.D.7.06 and Volume III Section III.D.7.06 Emissions Inventory, for purposes of the 2013 base year emissions inventory;
- Volume II Section III.D.7.08 Precursor Demonstration, for the purposes of NO_x and VOC emissions as it relates to BACM/BACT control measure requirements; and

Further, the EPA is approving the submitted section of the Alaska Air Quality Control Plan for the Fairbanks PM_{2.5} Nonattainment Area, State effective December 25, 2020:

- Volume II Section III.D.7.12, Emergency Episode Plan.³

³ Submitted on December 15, 2020 and included in the docket. The EPA is not at this time determining whether this updated planning chapter, in conjunction with the associated regulatory changes, meets other Serious area nonattainment plan requirements for the 2006 24-

In addition, the EPA is approving and incorporating by reference the submitted regulatory changes listed below into the Alaska SIP. As stated in our proposal, the EPA is not at this time determining whether these provisions also meet other Serious area nonattainment plan requirements for the Fairbanks PM_{2.5} Nonattainment Area. Upon the effective date of this action, the Alaska SIP will include:

- 18 AAC 50.030, except (a), State effective January 12, 2018;
- 18 AAC 50.075, except (d)(2) and (f), State effective January 8, 2020;
- 18 AAC 50.076, except (g)(11), State effective January 8, 2020;
- 18 AAC 50.077, except (g) and (q), State effective January 8, 2020;
- 18 AAC 50.078, except (c) and (d), State effective January 8, 2020;
- 18 AAC 50.079, except (e), State effective January 8, 2020; and
- 18 AAC 50.990(71), (138), (149), (150), (151), (152), (153), (154), and (155), State effective January 8, 2020.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the regulations described in Section III of this preamble. 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 State implementation plan, 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 by the Director of the Federal Register in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

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

merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the 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 November 23, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 15, 2021.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

- 2. In § 52.70:
 - a. The table in paragraph (c) is amended by:
 - i. Adding the entry “18 AAC 50.030” in numerical order;
 - ii. Revising the entries “18 AAC 50.075”, “18 AAC 50.076”, and “18 AAC 50.077”;
 - iii. Adding the entries “18 AAC 50.078” and “18 AAC 50.079” in numerical order; and
 - iv. Revising the entry “18 AAC 50.990”.

■ b. The table in paragraph (e) is amended by adding the entries “II.III.D.7.06 Fairbanks Emissions Inventory Data”, “III.III.D.7.06 Appendix to Fairbanks Emissions

Inventory Data”, “II.III.D.7.08 Fairbanks Modeling”, and “II.III.D.7.12 Fairbanks Emergency Episode Plan” to the end of the table.

The additions and revisions 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
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50) 18 AAC 50—Article 1. Ambient Air Quality Management				
18 AAC 50.030	State Air Quality Control Plan	1/12/2018	9/24/2021, [Insert Federal Register citation].	Except (a).
18 AAC 50.075	Solid Fuel-Fired Heating Device Visible Emission Standards.	1/8/2020	9/24/2021, [Insert Federal Register citation].	Except (d)(2) and (f).
18 AAC 50.076	Solid Fuel-Fired Heating Device Fuel Requirements; Requirements for Wood Sellers.	1/8/2020	9/24/2021, [Insert Federal Register citation].	Except (g)(11).
18 AAC 50.077	Standards for Wood-Fired Heating Devices.	1/8/2020	9/24/2021, [Insert Federal Register citation].	Except (g) and (q).
18 AAC 50.078	Additional Control Measures for a Serious PM _{2.5} Nonattainment Area.	1/8/2020	9/24/2021, [Insert Federal Register citation].	Except (c) and (d).
18 AAC 50.079	Provisions for Coal-Fired Heating Devices.	1/8/2020	9/24/2021, [Insert Federal Register citation].	Except (e).
18 AAC 50—Article 9. General Provisions				
18 AAC 50.990	Definitions	1/8/2020	9/24/2021, [Insert Federal Register citation].	

(e) * * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Recently—Approved Plans				
II.III.D.7.06 Fairbanks Emissions Inventory Data.	Fairbanks North Star Borough	12/13/2019	9/24/2021, [Insert Federal Register citation].	Approved for purposes of the Fairbanks Serious Plan 2013 base year emissions inventory.
III.III.D.7.06 Appendix to Fairbanks Emissions Inventory Data.	Fairbanks North Star Borough	12/13/2019	9/24/2021, [Insert Federal Register citation].	Approved for purposes of the Fairbanks Serious Plan 2013 base year emissions inventory.
II.III.D.7.08 Fairbanks Modeling.	Fairbanks North Star Borough	12/13/2019	9/24/2021, [Insert Federal Register citation].	Approved for purposes of the Fairbanks Serious Plan PM _{2.5} precursor demonstration for NO _x and VOC emissions as it relates to BACM/BACT control measure requirements.

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
II.III.D.7.12 Fairbanks Emergency Episode Plan.	Fairbanks North Star Borough	12/15/2020	9/24/2021, [Insert Federal Register citation].	

[FR Doc. 2021–20396 Filed 9–23–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0009; FRL–8785–01–OCSP]

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of metalaxyl in or on black pepper. American Spice Trade Association requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 24, 2021. Objections and requests for hearings must be received on or before November 23, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0009, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC

services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDFFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Publishing Office’s e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0009 in the subject line on

the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 23, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although at this time, EPA strongly encourages those interested in submitting objections or a hearing request, to submit objections and hearing requests electronically. See Order Urging Electronic Service and Filing (April 10, 2020), https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urgng_electronic_service_and_filing.pdf. At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal deliver, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system, at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf.

Although EPA’s regulations require submission via U.S. Mail or hand deliver, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, e.g., the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges,