

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction because it establishes a safety zone. An environmental analysis checklist and a

categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.837 to read as follows:

#### § 165.836 Safety Zone; Invista Inc Facility Docks, Victoria Barge Canal, Victoria, Texas.

(a) *Location.* The following area is a safety zone: All waters contained within a 500-foot (152.5m) extension east and west of the Invista Inc facility docks while performing offloading operations.

(b) *Enforcement Period.* This rule will be enforced for periods of 24–30 hours twice a month, from the time the oversized barge docks at the Invista Inc facility until the vessel departs the facility upon conclusion of its offloading operations. The Captain of the Port Corpus Christi will issue a Broadcast Notice to Mariners before beginning enforcement and upon ceasing enforcement of the safety zone.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Corpus Christi.

(d) *Regulations.* (1) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 1-361-939-6393, or the barge on VHF Channel 16 (156.800MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means the operator of a vessel must proceed as directed.

(4) The Coast Guard may be assisted by other Federal, State, or local agencies.

(5) In accordance with the general regulations in 33 CFR part 165.23, no person or vessel may enter or remain in the zone described in paragraph (a) of this section except for support vessels/ aircraft and support personnel, or other vessels authorized by the Captain of the Port Corpus Christi or his designated representative.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: November 19, 2009.

**R.J. Paulison,**

*Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.*

**Editorial Note:** This document was received in the Office of the Federal Register on March 16, 2010.

[FR Doc. 2010-6161 Filed 3-19-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R10-OAR-2008-0690; FRL-9091-5]

### Approval and Promulgation of State Implementation Plans: Alaska

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to approve numerous revisions to Alaska's State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance (I/M) program for the control of carbon monoxide (CO) in Anchorage and Fairbanks maintenance areas for CO. The State of Alaska submitted three revisions to the Alaska SIP: a March 29, 2002 submittal containing minor revisions to the statewide I/M program; a December 11, 2006 submittal containing more substantial revisions to the statewide I/M program; and a June 5, 2008 submittal containing major revisions to the statewide I/M program discontinuing the I/M program in Fairbanks as an active control measure in the SIP and shifting it to a contingency measure. EPA is approving these submittals because they satisfy the

requirements of the Clean Air Act (hereinafter the Act or CAA).

Also in this final action, EPA is correcting a transcription error in the boundary description for the Fairbanks CO maintenance area under section 110(k)(6) of the Act.

**DATES:** This action is effective on *April 21, 2010*.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2008-0690. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information 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 either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gina Bonifacino, (206) 553-2970, or by e-mail at [bonifacino.gina@epa.gov](mailto:bonifacino.gina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

## Table of Contents

- I. Background
- II. Comments Received During the EPA Public Comment Period
- III. Final Action
- IV. Statutory and Executive Order Reviews

### I. Background

The EPA is approving revisions to Alaska's SIP related to the I/M program. The I/M program is a control measure for CO in the maintenance plans for the Anchorage and Fairbanks areas that were approved by EPA on June 23, 2004 (69 FR 34935) and July 27, 2004 (69 FR 44601). The State submitted proposed revisions to the federally-approved SIP to EPA in three separate submittals dated March 29, 2002; December 11, 2006; and June 5, 2008. The March 29, 2002 submittal revises the statewide I/M regulations to provide for electronic

vehicle inspection renewal and to remove the requirement for a paper certificate to be maintained in the vehicle; the 2006 submittal revises the statewide I/M regulations to lengthen the time period before which new vehicles are required to obtain their first certificate of inspection from two years to four years. The June 5 submittal discontinues implementation of the I/M program for CO in the Fairbanks area. Each of the submittals also contains minor revisions that are administrative in nature. In each submittal, Alaska (the State) included a technical analysis using EPA approved models and methods to demonstrate that the Fairbanks and Anchorage areas will continue to maintain the CO standard, and the revision will not interfere with attainment of the remaining National Ambient Air Quality Standards (NAAQS) including the 24-hour fine particle (PM<sub>2.5</sub>) standard. Both the Anchorage and Fairbanks areas have been attaining the CO standards since 2001. On September 15, 2009, EPA proposed to approve the State's submittals. 74 FR 47154. EPA proposed to approve these submittals because they meet the requirements of the Act. For a more detailed discussion of the background of this rulemaking, please see EPA's notice of proposed approval. In this final action EPA is approving all of the SIP modifications proposed in Alaska's above-mentioned 2002, 2006, and 2008 submittals as originally proposed.

### II. Comments Received During the EPA Public Comment Period

The following summarizes the issues raised in comments on the EPA's proposed approval published on September 15, 2009 (74 FR 47154), and provides EPA's responses to those comments. All eight of the comments received relate to EPA's proposed action approving the State's 2008 submittal discontinuing the I/M program for CO in Fairbanks. EPA received a number of comments that were generally critical of the discontinuation of the I/M program for CO in Fairbanks. These commenters questioned the wisdom of discontinuing a program that has a beneficial impact on the community. As discussed in greater detail below, many of these issues fall outside of the scope of this action. No comments were received on the 2002 or the 2006 submittals modifying the statewide I/M program and those proposed modifications are being finalized in this action as originally proposed.

*Comment:* One commenter stated that any increase in CO levels will be a detriment to Fairbanks air quality.

*Response:* Under section 110(l) of the Act, the Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. In addition, under section 175A of the Act, an approved maintenance plan is required. As stated in EPA's September 15, 2009 proposed notice of approval of revisions to Alaska's CO SIP, including Alaska's revision to the CO maintenance plan for Fairbanks, the State's demonstration shows that emissions projections included in the State's submittal demonstrate that levels of CO will decline from current levels through 2015 with the discontinuation of the I/M program and that the State will maintain the CO standard in Fairbanks through 2015. The primary driver for this decline in CO emissions is the replacement of older, less clean burning vehicles with newer, cleaner burning vehicles.

*Comment:* A number of commenters stated concerns about the effect of the discontinuation of the Fairbanks I/M program on PM<sub>2.5</sub> in the area, and one stated that the I/M program should not be discontinued until all sources of PM<sub>2.5</sub> can be analyzed.

*Response:* The EPA is acting on the State's submission to revise the CO maintenance plan for the Fairbanks area to discontinue the I/M program beginning in calendar year 2010. As stated above, under section 110(l) of the Act, the Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. This includes a consideration of whether or not this action will interfere with attainment of the 2006 PM<sub>2.5</sub> and CO NAAQS. In addition, under section 175A of the Act, the area will need to have an approved maintenance plan. As stated in EPA's September 15, 2009 proposed notice of approval of revisions to Alaska's CO SIP, the State's demonstration shows that without the Fairbanks I/M program, PM<sub>2.5</sub> emissions from mobile sources will decline as compared to 2005 levels and the area will continue to attain the CO NAAQS through 2015.

The Fairbanks area was recently designated as a nonattainment area for 2006 PM<sub>2.5</sub> standard. 74 FR 58688, November 13, 2009. As a result of the nonattainment designation for the Fairbanks area for PM<sub>2.5</sub>, the State is required under section 172(b) of the Act to develop and submit a State

Implementation Plan within three years from the effective date of the designations that will demonstrate attainment with the PM<sub>2.5</sub> standard in the Fairbanks area. Under section 172(c)(6) and 172(a)(2) of the Act, the plan must contain a suite of control measures that will be designed to address the sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emissions in the Fairbanks area contributing to nonattainment in the area and achieve attainment status as expeditiously as practicable but within 5 years of designation. This submission will be due no later than December 14, 2012. 74 FR 58688.

According to Alaska's emissions analysis using the EPA-approved mobile source model, MOBILE6.2, emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors are generally projected to decline substantially from 2005 levels through 2015 (the end of the modeling period). Directly emitted PM<sub>2.5</sub> emissions are projected to decline by 66% during this period according to MOBILE6.2 and this rate of decline is unaffected by the discontinuation of the I/M program.

EPA has promulgated regulations that address how areas that have been designated as nonattainment for the PM<sub>2.5</sub> NAAQS should address PM<sub>2.5</sub> direct emissions and PM<sub>2.5</sub> precursors in implementation plans. See 40 CFR 51.1002(c). Contrary to the assertion of the commenter, Alaska is not required under these regulations to analyze "all sources of PM<sub>2.5</sub>." As explained in the **Federal Register** Notice promulgating the final PM<sub>2.5</sub> Implementation Rule (72 FR 20586, April 25, 2007), EPA has established requirements for PM<sub>2.5</sub> State Implementation Plans that take into account the contributions of PM<sub>2.5</sub> precursor emissions under area-specific conditions. The rule represents an approach that "requires sulfur dioxide to be evaluated for control measures in all areas, and describes general presumptive policies for NO<sub>x</sub>, ammonia, and VOC for all nonattainment areas. The rule provides a mechanism by which the State and/or EPA can make an area-specific demonstration to reverse the general presumption for these three precursors."<sup>1</sup> 72 FR 20589.

<sup>1</sup> The State must address NO<sub>x</sub> as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of NO<sub>x</sub> emissions in the State for control measures, unless the State and EPA provide an appropriate technical demonstration for a specific area showing that NO<sub>x</sub> emissions from sources in the State do not significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area. The State is not required to address VOC as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of VOC emissions in the State for control measures, unless the State provides an appropriate technical demonstration for a specific area showing that VOC emissions from

For the reasons discussed below, taking into consideration the Agency's policy position on determining whether or not certain PM<sub>2.5</sub> precursor emission sources must be taken into consideration when selecting control measures, as well as the best available data and modeling results regarding the anticipated effects of the discontinuation of the Fairbanks I/M program, EPA concludes that the minor changes in levels of certain PM<sub>2.5</sub> precursor emissions in the Fairbanks area will not interfere with the area's ability to attain the PM<sub>2.5</sub> NAAQS. EPA and Alaska have taken into consideration the effect of potentially discontinuing the Fairbanks I/M program on several PM<sub>2.5</sub> precursor emissions: hydrocarbon (HC) (also referred to as VOC), NO<sub>x</sub>, SO<sub>x</sub>, and ammonia. Baseline emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors are projected to decline between 2005 and 2015 regardless of whether or not the I/M program is in place. VOC levels are projected to decline by 51% with the I/M program and by 39% without the I/M program. NO<sub>x</sub> levels are projected to decline by 63% with the I/M program and by 59% without the I/M program. SO<sub>x</sub> levels are projected to almost disappear after 2005 because of the implementation of low sulfur gasoline and diesel fuel requirements in urban Alaskan areas. Ammonia is the only pollutant that modeling projects to increase from 2005 to 2015, but at a very low level, (0.01 ton/day) and this is attributable to growth in vehicle miles traveled through that period. The discontinuation of the I/M program will not affect ammonia emissions. In light of this information, EPA has concluded that any potential ammonia contributions to PM<sub>2.5</sub> formation in the Fairbanks area can not be attributed to the discontinuation of the I/M program.

Direct PM<sub>2.5</sub>, SO<sub>x</sub> and ammonia precursor PM<sub>2.5</sub> emissions in the Fairbanks area are expected to be unaffected by the discontinuation of the I/M program in Fairbanks, while HC and NO<sub>x</sub> emissions are projected to change slightly. The elimination of the I/M program will slightly diminish the

sources in the State significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area, and such demonstration is approved by EPA or the EPA provides such a technical demonstration. The State is not required to address ammonia as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of ammonia emissions from sources in the State for control measures, unless the State provides an appropriate technical demonstration for a specific area showing that ammonia emissions from sources in the State significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area, and such demonstration is approved by EPA or the EPA provides such a technical demonstration. See 40 CFR 51.1002(c)(1)-(4)

reduction in NO<sub>x</sub> and HC emissions predicted to occur between 2010 and 2015. EPA's review of the available data shows that the changes in emission rates are projected to range between 0.10 and 0.17 tons/day for each of these pollutants respectively. However, in the absence of a demonstration that VOCs are contributing significantly to PM<sub>2.5</sub> nonattainment in an area, the state is not required to develop a plan to control VOC sources for the purposes of PM<sub>2.5</sub> NAAQS attainment. See 40 CFR 51.1002(c)(3). EPA has no technical basis to conclude that VOCs are a significant contributor to PM<sub>2.5</sub> nonattainment in Fairbanks. Consequently, EPA has determined in this instance that changes in VOC emissions attributable to the discontinuation of the I/M program will not interfere with Alaska's ability to attain the PM<sub>2.5</sub> NAAQS.

EPA's PM<sub>2.5</sub> NAAQS implementation rule requires that PM<sub>2.5</sub> nonattainment areas address PM<sub>2.5</sub> precursor NO<sub>x</sub> emissions and evaluate sources of those emissions in the state for control measures, unless the state and EPA provide an appropriate technical demonstration for a specific area showing that NO<sub>x</sub> emissions from sources in the state do not significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area. Data in the Technical Support Document for EPA's 2006 24-hour PM<sub>2.5</sub> designations evidences a poor correlation between NO<sub>x</sub> and PM<sub>2.5</sub> formation in Fairbanks. All available information regarding PM<sub>2.5</sub> precursor emissions in the Fairbanks area supports EPA's determination in this instance that that NO<sub>x</sub> emissions attributable to a discontinuation of the I/M program (estimated to be no more than 0.10 tons per day) will not significantly contribute to the formation of PM<sub>2.5</sub> in the affected area. Only a fraction of the .10 tons/day of NO<sub>x</sub> would be converted to PM<sub>2.5</sub>. Additionally, a speciation analysis of 2006-2008 PM<sub>2.5</sub> monitoring data in Fairbanks shows that on the 12 days when the PM<sub>2.5</sub> standard was exceeded in 2006-2008 the average mass of nitrate was 1.58 µg/m<sup>3</sup>. When this is adjusted for ammonium, the value of ammonium nitrate is 2.04 µg/m<sup>3</sup>. This is 4.4% of the total average PM<sub>2.5</sub> mass (46.69 µg/m<sup>3</sup>) recorded on violation days. The twelve days when the PM<sub>2.5</sub> standard was violated in 2006-2008 all occurred during the winter months and the technical data in the record indicate that levels of PM<sub>2.5</sub> above the 35 µg/m<sup>3</sup> level of the NAAQS were caused by increased use of wood-burning stoves and home heating oil. These data support EPA's

conclusion that the small increase in precursor NO<sub>x</sub> emissions attributable to the discontinuation of the I/M program will not interfere with the ability of the area to attain the PM<sub>2.5</sub> NAAQS standard.

*Comment:* One anonymous commenter stated that the removal of the I/M program will increase PM<sub>2.5</sub> and expressed concerns about discontinuing the I/M program, contending that there were high PM<sub>2.5</sub> levels in the area and citing data that shows unexplained hotspots on Airport Road coupled with the lack of study of mobile source concentrations.

*Response:* The anonymous commenter did not identify the source or nature of the data which underlies their comment and the basis for concluding that there is a PM<sub>2.5</sub> "hot spot" on Airport Road in Fairbanks. EPA is aware that the State has collected preliminary screening data using instantaneous mobile monitoring around Fairbanks that shows elevated concentrations of PM<sub>2.5</sub> in the vicinity of Airport Road. This data was collected to yield preliminary information on the location of elevated PM<sub>2.5</sub> concentrations in the Fairbanks area. As preliminary data, it has not undergone quality assurance processes, nor was it collected in accordance with EPA-approved methods. EPA believes that this preliminary data is inconclusive concerning the source(s) contributing to elevated PM<sub>2.5</sub> concentrations in that area. Although the monitoring data evidences an episodic elevated concentration of PM<sub>2.5</sub> in the Airport Road area, we have no basis to determine that these events constitute exceedences or violations of the PM<sub>2.5</sub> standard. Furthermore, this data does not provide a foundation to conclude that these elevated concentrations around Airport Road are affiliated with mobile sources that would be impacted by the discontinuation of the I/M program. As stated above, data collected and submitted by the State using EPA approved methods indicates that direct PM<sub>2.5</sub> will be unaffected by the elimination of the I/M program in Fairbanks, and the changes in NO<sub>x</sub> and HC precursor emissions projected to result from discontinuation of the I/M program will not interfere with attainment of the PM<sub>2.5</sub> NAAQS in Fairbanks.

*Comment:* Several commenters expressed concerns with health risks attributable to PM<sub>2.5</sub> and questioned the appropriateness of discontinuing the I/M program because doing so would eliminate the health-benefits of the program.

*Response:* Primary CO, PM<sub>2.5</sub> and the remaining criteria pollutant standards are health-based standards set through the process outlined in sections 108 and 109 of the Clean Air Act. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." The State's submittal demonstrates that the discontinuation of the I/M program in Fairbanks will not interfere with attainment or maintenance of the health-based ambient air quality standard for PM<sub>2.5</sub>. As discussed above, EPA expects that Alaska will develop and submit for EPA approval a SIP to achieve attainment with the 24-hour PM<sub>2.5</sub> standard in accordance with the schedule established by the Act.

*Comment:* One commenter stated that the program should be expanded to include diesel vehicles.

*Response:* The CAA established a system of air quality management whereby each state develops and proposes, after reasonable notice and public involvement processes, proposed plans for the attainment or maintenance of the NAAQS. In reviewing a state's proposed SIP amendment, EPA must determine whether or not the proposed amendment meets the requirements of the Act. EPA is not empowered to alter the scope of the regulatory regime selected by the state to achieve or maintain attainment with a national ambient air quality standard unless it finds the state's proposed plan to be deficient and elects to develop a Federal Implementation Plan (FIP) in lieu of the SIP. The State did not include any provisions related to diesel vehicles in its proposed SIP amendment. EPA is acting on the State's submission which is limited in scope to revisions to the existing SIP for CO. We have reviewed the State's submittal and found that it meets the requirements of the Act.

*Comment:* One commenter expressed concerns that without the I/M program in place in Fairbanks, vehicles that were registered as seasonally registered vehicles prohibited from driving during the winter under the I/M program would be permitted on the road. Another commenter stated that the I/M program is needed to keep dirty vehicles off of the road in the winter time.

*Response:* The State's emission projections include emissions from all vehicles in the Fairbanks area including those that qualify as seasonally registered vehicles under the I/M program. The State used these emission projections in their demonstration of

attainment and maintenance which shows that the discontinuation of the I/M program (which includes the discontinuation of seasonal prohibitions for vehicles registered as seasonally registered) will not interfere with attainment or maintenance of the CO or PM<sub>2.5</sub> standards during the winter season.

*Comment:* One commenter stated that without the I/M program, maintenance of cars will be put off until vehicles fail to run.

*Response:* As discussed above, EPA is taking this final action in accordance with section 110 of the Act to verify that the State's proposed SIP modification meets the requirements of the CAA and that the proposed SIP modification will continue to result in the maintenance of attainment with the CO NAAQS. EPA does not have the authority to add provisions to the state program in this action. Car maintenance standards of the type raised by the commenter are outside of the scope of this action when they do not have an impact on maintenance or attainment of ambient air quality standards.

*Comment:* Several commenters stated that the program should not be discontinued because the benefits of the I/M program outweigh its costs.

*Response:* The Act does not require EPA to conduct a cost-benefit analysis when reviewing state-proposed revisions to SIPs. The State must demonstrate that the revision to the SIP will not interfere with attainment or maintenance of the health-based standards. The State has demonstrated that the discontinuation of the Fairbanks I/M program will not interfere with attainment or maintenance of the NAAQS in that area, and is therefore approvable by EPA without consideration of whether the benefits achieved by the program exceed its costs.

### III. Final Action

For the reasons provided above and in our September 15, 2009 proposed rule, we are approving Alaska's 2002, 2006, and 2008 SIP revisions, including the discontinuation of the I/M program for CO in the Fairbanks area beginning in calendar year 2010. Also in this action, EPA is correcting a transcription error in the boundary description for the Fairbanks CO maintenance area contained in 40 CFR 81.302 under section 110(k)(6) of the Act.

EPA is incorporating by reference the following new and revised sections of the Alaska Department of Conservation's air quality regulations: 18 AAC 50.030 Air Quality Control as in effect May 15, 2008; 18 AAC 52

Emissions Inspection and Maintenance Requirements for Motor Vehicles as in effect May 15, 2008 and AO 2006–13, an ordinance amending Anchorage Municipal Code chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures January 24, 2006 and Chapters 15.80 and 15.85 of the Anchorage Municipal Code.

#### 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 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 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 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the 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 May 21, 2010. 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

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 4, 2009.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, EPA Region 10.*

■ 40 CFR parts 52 and 81 are amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(37) to read as follows:

#### § 52.70 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(37) On March 29, 2002, December 11, 2006 and June 5, 2008 the Alaska Department of Environmental Conservation submitted revisions to the SIP approved inspection and maintenance program for Carbon Monoxide. The SIP revisions meet the requirements of the Clean Air Act.

(i) *Incorporation by reference.*

(A) The following new and revised sections of ADEC's air quality regulations:

(1) 18 AAC 50.030 Air Quality Control as in effect May 17, 2008.

(2) 18 AAC 52 Emissions Inspection and Maintenance Requirements for Motor Vehicles as in effect May 17, 2008.

(3) AO 2006–13 an ordinance amending Anchorage Municipal Code chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures January 24, 2006 and Chapters 15.80 and 15.85 of the Anchorage Municipal Code as approved February 14, 2006.

(ii) *Additional material*

(A) The following revised sections of Alaska's air quality regulations:

(1) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section II: Air Quality Program, April 4, 2008

(2) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.A. Statewide Carbon Monoxide Control Program, April 4, 2008

(3) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.C. Fairbanks Transportation Control Program, April 4, 2008

(4) Amendments to State Air Quality Control Plan, Vol. III Appendices (Appendix III.A.2 and Appendix to III.C.3), April 4, 2008

(5) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.B. Anchorage Transportation Control Program, September 19, 2006

(6) Vol. III. Appendix to Vol. II, Sec II, September 19, 2006

(7) Vol. III. Appendix to Vol. II, Sec III.A, September 19, 2006

(8) Vol. III. Appendix to Vol. II, Sec III.B, September 19, 2006

(9) Vol. III. Appendix to Vol. II, Sec III.C, September 19, 2006

**PART 81—[AMENDED]**

■ 3. The authority citation for Part 81 continues to read as follows:

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

■ 4. In § 81.302, the table entitled “Alaska—Carbon Monoxide” is amended by revising the entry for “Fairbanks Area Fairbanks Election District (part)” to read as follows:

**§ 81.302 Alaska.**

\* \* \* \* \*

**ALASKA—CARBON MONOXIDE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	*	*	*	*
Fairbanks Area	September 27, 2004.	Attainment.		
Fairbanks Election District (part)				
Fairbanks nonattainment area boundary:				
1. Township 1 South, Range 1 West, Sections 2 through 23, the portion of Section 1 west of the Fort Wainwright military reservation boundary and the portions of Section 24 north of the Old Richardson Highway and west of the military reservation boundary, also, Township 1 South, Range 2 West, Sections 13 and 24, the portion of Section 12 southwest of Chena Pump Road and the portions of Sections 14 and 23 southeast of the Chena river. Also, Township 1 South, Range 1 East, Sections 7, 8, and 18 and the portion of Section 19 north of the Richardson Highway. (Fairbanks and Ft. Wainwright)				
2. Township 2 South, Range 2 East, the portions of Sections 9 and 10 southwest of the Richardson Highway. (North Pole)				
* * *	*	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. 2010-3235 Filed 3-19-10; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Hours of Service; Limited 90-Day Waiver for the Distribution of Anhydrous Ammonia in Agricultural Operations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Grant of waiver.

**SUMMARY:** FMCSA grants a limited 90-day waiver from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale

distribution point. This waiver extends the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended by the sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) to certain motor carriers engaged in the distribution of anhydrous ammonia during the 2010 spring planting season. The Agency has determined that the waiver would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. This waiver preempts inconsistent State and local requirements applicable to interstate commerce.

**DATES:** The waiver is effective *March 22, 2010*. The waiver expires on *June 21, 2010*.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

*E-mail:* [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone (202) 366-4325.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. (49 U.S.C. 31136, 31315(a)) The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may only be granted to a person for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR