

The EPA Administrator, Lisa P. Jackson, signed the following notice on 08/31/2011, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. **EPA-HQ-OAR-2011-0747**. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA-HQ-OAR-2011-0747; FRL-]

**Findings of Failure to Submit a Complete State Implementation Plan for Section 110(a)
Pertaining to the 2006 Fine Particulate Matter (PM_{2.5}) NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that certain states, the District of Columbia, and the Commonwealth of Puerto Rico have not submitted a complete State Implementation Plan (SIP) that addresses basic program elements of the Clean Air Act (CAA or Act) necessary to implement, maintain, and enforce the 2006 24-hour Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The EPA refers to these SIP submissions as “infrastructure” SIPs, because they address basic structural requirements specified in section 110(a)(1) and (2) that states must establish that they meet following the promulgation of a new or revised NAAQS. Specifically, the EPA is evaluating whether these states, the District of Columbia, and the Commonwealth of Puerto Rico made complete infrastructure SIP submissions to address the applicable requirements of section 110(a)(2)(A) through (M) necessary to implement the 2006 PM_{2.5} NAAQS, with the exception of section 110(a)(2)(I), portions of section 110(a)(2)(C) pertaining to nonattainment area requirements and section 110(a)(2)(D)(i)(I). By this action, the EPA is identifying those states, the District of Columbia, and the Commonwealth of Puerto Rico that have failed to make a complete submission for some or all of these

specific requirements. The finding of failure to submit for some or all of these specific elements establishes a 24-month deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address each state's outstanding infrastructure SIP elements unless, prior to that time, the state submits, and the EPA approves, a submission that meets the required elements, or unless the state is already subject to an existing FIP that addresses the SIP deficiency.

DATES: The effective date of this rule is **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-01, Research Triangle Park, NC 27709; telephone (919) 541-3356; fax number (919) 541-0824; email address: sanders.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) (B).

For questions related to a specific state, the District of Columbia, and the Commonwealth of Puerto Rico, please contact the appropriate regional office below.

Regional Offices	States
<p>Region II - Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866.</p>	<p>Puerto Rico.</p>
<p>Region III - Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187.</p>	<p>District of Columbia.</p>
<p>Region VII - Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, KS 66101-2907.</p>	<p>Iowa.</p>
<p>Region VIII - Monica Morales, Air Quality Planning Unit Manager, EPA Region VIII Air Program, 1595 Wynkoop St. (8P-AR), Denver, CO 80202-1129.</p>	<p>Montana.</p>
<p>Region IX - Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.</p>	<p>Arizona and Hawaii.</p>

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<p>Region X - Robert Elleman, Manager, State and Tribal Air Programs, EPA Region X, Office of Air , Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101.</p>	<p>Alaska and Washington.</p>
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I. Background

On September 21, 2006, the EPA promulgated a final rule revising the existing 1997 24-hour NAAQS for PM_{2.5} from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³. In that action, the EPA set the revised 2006 24-hour PM_{2.5} primary standard at 35 µg/m³.

CAA section 110(a) requires states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as the EPA may prescribe. These SIPs were due on

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September 21, 2009. The EPA refers to these specific submissions as “infrastructure” SIPs because they are intended to address basic structural requirements for SIPs for a new or revised NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains.

Section 110(a)(2) lists specific elements that states must meet, as applicable, in the general infrastructure SIP submissions. The requirements include basic SIP infrastructure elements such as SIP provisions to provide for monitoring, enforcement, and general legal authority, which are designed to assure attainment and maintenance of the NAAQS. In the case of section 110(a)(2)(D)(i), the provisions are intended to assure that the SIP of the state in question contains provisions necessary to prevent certain prohibited impacts on air quality in other states. In a September 25, 2009, memorandum titled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” the EPA identified the requirements that are the subject of this action, as applicable, and provided additional recommendations concerning the requirements. Most states submitted SIPs addressing section 110(a)(2). For various reasons, some of the submissions did not address all infrastructure SIP elements.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as

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required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Therefore, this action does not cover these specific section 110(a)(2) elements. However, this action does pertain to the requirements in section 110(a)(2)(D)(i)(II) for prevention of significant deterioration (PSD). On June 9, 2010, in a separate final rulemaking (75 FR 32763), the EPA found that 29 states and territories had not made a SIP submittal that addressed the section 110(a)(2)(D)(i)(I) requirements related to interstate transport.¹

On January 12, 2011, WildEarth Guardians and Sierra Club filed a complaint against the EPA alleging that the agency had failed to take final action on infrastructure SIPs submitted by some states for the 2006 PM_{2.5} NAAQS and that the agency had failed to make findings of failure to submit for other states that had failed to make such infrastructure SIP submissions.

II. This Action

This action reflects the EPA's determinations with respect to the section 110(a)(2) requirements for the 2006 24-hour PM_{2.5} NAAQS only. These are based upon the failure of states to submit infrastructure SIPs to address the requisite requirements, or failure to certify that they have already met the requisite requirements, or both. For those states that have not yet made a submittal and for those states that made a submittal that was not complete with respect to each element of section 110(a)(2), as applicable, the EPA is making a finding of failure to submit a complete SIP.

For those states that did not make any submittal, except as noted above with respect to the June 9, 2010, finding, the EPA is making a finding of failure to submit a complete SIP with respect to all of the section 110(a)(2) SIP elements. In the same manner, for those states that did not make a submittal

¹ That notice included, among others, the states of Alaska, Iowa, Montana, and the District of Columbia and the Commonwealth of Puerto Rico, some of which are also subject of this action. We are not superseding or otherwise affecting that limited finding with respect to those states which the finding remains in effect.

that addressed all of the section 110(a)(2) elements, as applicable, the EPA is making a finding of failure to submit only with respect to those specific elements for which the state did not make a complete submission. These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1), unless prior to that time the state submits, and EPA approves, a submission from the state to address the elements for which the finding of failure to submit applies. These findings of failure to submit do not impose sanctions, and do not set deadlines for imposing sanctions as described in section 179, because these findings do not pertain to the elements of a Title I part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5). The EPA will work with these states and provide assistance as necessary to help them develop approvable submittals in a timely manner.

This action will be effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Findings of Failure to Submit for States that Failed to Make an Infrastructure SIP Submittal in whole or in part for the 2006 24 hour PM_{2.5} NAAQS:

Region II:

Puerto Rico failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) and (J)-(M).

Region III:

District of Columbia failed to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(II) (PSD prong only). Regarding this finding, section 110(a)(2)(D)(i)(II) (PSD prong only) is already addressed for the District of Columbia through an existing FIP that remains in place. Therefore, this action will not trigger any additional FIP obligation with respect to these requirements.

Region VII:

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Iowa failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) and (J)-(M).

Region VIII:

Montana failed to submit for section 110(a)(2)(D)(i)(II) (PSD prong only).

Region IX:

Arizona failed to submit for section 110(a)(2)(G).

Hawaii failed to submit for section 110(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) and (J)-(M).

Region X:

Alaska failed to submit for section 110(a)(2)(A)-(C), (E)-(H) and (J)-(M).

Washington failed to submit for section 110(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) and (J)-(M).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden. This rule relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 PM_{2.5} NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and

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enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide. The final rule does not establish any new information collection requirement apart from that already required by law. The OMB control numbers for the EPA's regulations in the CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any action subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the action will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final action on small entities, small entity is defined as: (1) a small business that is a small industry entity as defined in the U.S. Small Business Administration size standards (See 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which independently owned and operated is not dominate in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 PM_{2.5} NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide.

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D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538 for state, local, and tribal governments and the private sector. The action does not impose any new enforceable duty on any state, local or private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 PM_{2.5} NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action will not modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249). It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has

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implemented an air quality management program related to the 2006 PM_{2.5} NAAQS. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is making findings concerning whether or not each state has submitted a complete SIP that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement the 2006 PM_{2.5} NAAQS. The findings of failure to submit for all or a portion of states' SIP establish a 24-month deadline for the EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected states submit, and the EPA approves, the required SIPs.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. At the time of proposal of the implementation rule for the 1997 PM_{2.5} standard, information on the methodology and data regarding the assessment of potential energy impacts regarding implementation of the 2006 PM_{2.5} standard was not addressed because the PM_{2.5} NAAQS is not a significant energy action. This is based on the fact that no impacts are specifically ascribed to the standard only. Potential energy impacts are ascribed during the implementation phase by the states. An energy impact analysis, as part of a regulatory impact analysis or other assessment for the PM_{2.5}

NAAQS rule, was prepared by the Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003. [October 17, 2006 (71 FR 60853)]

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is

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making a finding concerning whether each state has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 2006 PM_{2.5} NAAQS.

K Congressional Review Act

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 action 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). This action will be effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the Federal Register. Filing a petition for review by the Administrator of this final action 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 must be final, and shall not postpone the effectiveness of such action.

Thus, any petitions for review of this action related to findings of failure to submit related to the requirements of section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA

for the 2006 PM_{2.5} NAAQS must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the Federal Register.

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List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated:

Gina McCarthy, Assistant Administrator,
Office of Air and Radiation.