

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5 Chapter 80)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–80–1985	Permit invalidation, revocation, and enforcement	9/1/06	10/22/08 [Insert page number where the document begins].	5–80–1950. Limited Approval.
5–80–1995	Existence of permit no defense	9/1/06	10/22/08 [Insert page number where the document begins].	New. Limited Approval.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2008–0452; FRL–8728–3]

Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding concerning whether or not each state has submitted a complete State Implementation Plan (SIP) that provides the basic program elements specified in section 110(a)(2) of the Clean Air Act (CAA or Act) necessary to implement the 1997 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). By this action, EPA is

identifying those states that: Have failed to make a complete submission for all requirements; have failed to make a complete submission for specific requirements; or have made a complete submission. The findings of failure to submit or determinations of incompleteness for all or a portion of a state’s SIP establish a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submit, and EPA approves, the required SIPs. The findings that all, or portions of a state’s SIP submission, are complete establish a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with the CAA.

DATES: The effective date of this rule is November 21, 2008.

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; e-mail 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. EPA has determined that there is good cause for making this action 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. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific state please contact the appropriate regional office below.

Regional offices	States
Region I—Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203–2211.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region II—Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Region III—Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Region IV—Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Region V—Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Region VI—Thomas Diggs, Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Region VII—Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907.	Iowa, Kansas, Missouri, and Nebraska.
Region VIII—Cynthia Cody, Unit Leader, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P–AR), Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
Region IX—Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Commonwealth of Northern Mariana Islands, Guam, Hawaii, and Nevada.

Regional offices	States
Region X—Mahbubul Islam, 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.	Alaska, Idaho, Oregon, and Washington.

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I. Background

On July 18, 1997, EPA promulgated a revised NAAQS for PM_{2.5}. In that action, the annual PM_{2.5} standard was set at 15 µg/m³, based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations from single or multiple community-oriented monitors. The 24-hour PM_{2.5} standard was set at 65 µg/m³, based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each population-oriented monitor within an area (see 62 FR 38652).

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 EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised

NAAQS 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.

As of 2004, states had not submitted complete SIPs to satisfy all of the section 110(a)(2) requirements for the 1997 PM_{2.5} NAAQS (as well as for the 8-hour ozone NAAQS). On March 4, 2004, Earth Justice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to these requirements. Subsequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to sign a notice for publication in the **Federal Register** no later than October 5, 2008, announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state has made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS.

Section 110(a)(2) lists specific elements that states must meet in the general infrastructure SIP submissions. The requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. In an October 2, 2007 memorandum entitled, "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," EPA identified the specific requirements that are the subject of this action and provided additional guidance on meeting the requirements.

Of special interest is section 110(a)(2)(G) of the CAA which requires SIPs to provide authority for emergency episode plans comparable to that in section 303, as well as provide adequate contingency plans to implement such authority. On that authority, EPA previously established Significant Harm Levels (SHL) for five criteria pollutants—sulfur dioxide, inhalable particulate matter (PM₁₀), nitrogen dioxide, carbon monoxide, and ozone. The SHL represents ambient concentrations of said pollutant that EPA determined, based on health effects data at that time, present an imminent and substantial endangerment to public health or welfare, or to the

environment.¹ Since EPA has yet to develop a SHL for PM_{2.5}, states have been placed at a disadvantage in meeting this requirement under the CAA. Although EPA's delay in developing a SHL for PM_{2.5} may have made it more difficult for states to meet the section 110(a)(2)(G) obligation, nonetheless, states are still required by statute to satisfy the obligation to have adequate authority to protect the public in the event of a dangerous PM_{2.5} air pollution episode and adequate contingency plans to implement that authority. In this notice, we make findings that some states have failed to make a submission addressing either statutory authority for emergency powers or adequate contingency plans, or both.

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: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to the requirements in section 110(a)(2)(D)(i), because EPA has previously addressed that requirement.²

¹ The SHLs and associated requirements for developing Emergency Episode Plans are codified at 40 CFR Part 51 Subpart H. Appendix L of Part 51, provides an example regulation intended as a guide for states that must develop emergency episode plans (51 FR 40668, November 7, 1986). Subpart H requires states to develop emergency episode plans (where appropriate) that, at a minimum, provide a set of actions that are necessary to prevent ambient pollutant concentrations from reaching levels that could cause significant harm and endangerment to the health of persons in the affected areas.

² EPA published a finding that all states had failed to submit SIPs addressing interstate transport for the 8-hour ozone and PM_{2.5} NAAQS, as required by section 110(a)(2)(D)(i). See 70 FR 21,147 (April 25, 2005).

II. This Action

This notice reflects EPA's determinations with respect to the section 110(a)(2) requirements for the 1997 PM_{2.5} NAAQS only, based upon the submissions made by the states to fulfill the requirements, or certifying that they have already met the requirements, or both. For those states that have not yet made a submittal, EPA is making a finding of failure to submit, and for those states that made a submittal that was not complete with respect to each element of section 110(a)(2), EPA is making an incompleteness finding.

For those states that did not make any submittal, EPA is making a finding of failure to submit with respect to all of the section 110(a)(2) SIP elements. For those states that did not make a submittal that addressed all of the section 110(a)(2) elements, EPA is making these findings only with respect to those specific section 110(a)(2) SIP elements which a state has not certified that it has met, or not made a SIP submission to meet, as of the signature date of this notice. These findings establish a 24-month deadline for the promulgation by EPA of a FIP, in accordance with section 110(c)(1). These findings of failure to submit do not impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, 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).

For states receiving an incompleteness finding for certain elements in section 110(a)(2), EPA is also finding that the remaining elements of section 110(a)(2) are complete. For states which EPA has not made any findings of failure to submit for the section 110(a)(2) SIP elements, EPA is by this action making a finding of completeness for all elements. These full and partial completeness findings establish a 12-month deadline for EPA to take action upon such SIPs in accordance with section 110(k).³

This action will be effective on November 21, 2008.

A. Finding of Failure To Submit for States or Territories That Failed To Make a Submittal

The following states or territories failed to make a submittal to satisfy the

requirements of section 110(a)(2) as of the date of signature of this notice. The effective date of this action starts a 24-month FIP clock for EPA to approve a SIP for the affected states or territories that addresses section 110(a)(2) requirements, or for EPA to finalize a FIP. The states and territories that are affected by this finding of failure to submit are the following:

Region I: Vermont
Region VI: Oklahoma
Region VIII: North Dakota
Region IX: Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands
Region X: Alaska, Washington

B. Finding of Failure To Submit Specific Elements of Section 110(a)(2)

The following states made submissions that address some, but not all, of the section 110(a)(2) requirements as of the signature date of this notice. EPA is by this action identifying the specific elements for which states have not made a complete submission. The effective date of this action starts a 24-month FIP clock for EPA to approve a SIP for the affected states or territories that addresses these specific section 110(a)(2) elements, or for EPA to finalize a FIP that does so:

Region I

Massachusetts: The State of Massachusetts has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region II

New Jersey: The State of New Jersey has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of New Jersey has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

New York: The State of New York has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of New York has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part

C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Puerto Rico: The Territory of Puerto Rico has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the Territory of Puerto Rico has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Virgin Islands: The Territory of the Virgin Islands has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the Territory of the Virgin Islands has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region III

Washington, DC: The District of Columbia has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Region V

Illinois: The State of Illinois has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Michigan: The State of Michigan has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

Minnesota: The State of Minnesota has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. Also, the State of Minnesota has failed to submit a SIP addressing section

³ For those submissions that were made more than 6 months ago, EPA's deadline to take action to approve those submissions is 18 months from the date of submittal.

110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations.

Wisconsin: The State of Wisconsin has submitted a certification letter which fails to address the contingency plans portion of the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

Region IX

Arizona: The State of Arizona has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations. Also, the State of Arizona has submitted a certification letter which fails to address the section 110(a)(2)(E)(i) and section 110(a)(2)(E)(ii) concerning the necessary assurances of adequate resources and authority under state law and state compliance with requirements respecting state boards. The State of Arizona has submitted a certification letter which fails to address the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans.

California: The State of California has submitted a certification letter which fails to address the section 110(a)(2)(G) element concerning emergency powers and adequate contingency plans. The State of California has failed to submit a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program that applies to some Air Districts within the State. However, this requirement has already been addressed by a FIP that remains in place, and therefore, this action will not trigger any additional FIP obligations. All other areas of the state, exclusive of these Air Districts have an approved PSD program in place.

C. States That Submitted Complete Submissions To Satisfy the Section 110(a)(2) Requirements

The following states have been determined by EPA to have made complete SIP submissions that address all of the section 110(a)(2) requirements as of the signature date of this notice:

Region I: Connecticut, Maine, New Hampshire, Rhode Island
 Region III: Delaware, Maryland, Pennsylvania, Virginia, West Virginia
 Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
 Region V: Indiana, Ohio

Region VI: Arkansas, Louisiana, New Mexico, Texas

Region VII: Iowa, Kansas, Missouri, Nebraska

Region VIII: Colorado, Montana, South Dakota, Utah, Wyoming

Region IX: Nevada

Region X: Idaho, Oregon

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1230.3(b). 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 1997 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 EPA may provide. The present action does not establish any new information collection requirement apart from that already required by law.

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 final action will not impose any requirements on 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 1997 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 EPA may provide.

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 imposes no enforceable duty on any state, local or tribal governments or the 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 1997 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 EPA may provide.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have “substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

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 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, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented an air quality management program related to the 1997 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

EPA interprets Executive Order 13045 (62 FR 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 1997 PM_{2.5} NAAQS. The findings of failure to submit for all or a portion of a state’s SIP establish a 24-month

deadline for EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected states submit, and EPA approves, the required SIPs.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer 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 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 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, 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.

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 affect the level of protection provided to human health or the environment. This notice is 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 1997 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. 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 November 21, 2008.

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 within 60 days from the days from the date 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 1997 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**.

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: October 3, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

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