calendar month basis using the following formulas:

SO_2 emissions in pounds = (carbon ratio) × (tons of aluminum produced during the calendar month) × (% sulfur in baked anodes/100) × (% sulfur converted to SO_2/100) × (2 pounds of SO_2 per pound of sulfur) × (2000 pounds per ton)

SO_2 emissions in pounds per ton of aluminum produced = (SO_2 emissions in pounds during the calendar month)/(tons of aluminum produced during the calendar month)

(A) The carbon ratio is the calendar month average of tons of baked anodes consumed per ton of aluminum produced as determined using the baked anode consumption and aluminum production records required in paragraph (h)(2) of this section.

(B) The % sulfur in baked anodes is the calendar month average sulfur content as determined in paragraph (b)(1)(ii) of this section.

(C) The % sulfur converted to SO_2 is 90%.

* * * * *

[FR Doc. 2014–27502 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2014–0337; FRL–9919–67–OAR]

RIN 2060–AS33

Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2010 Nitrogen Oxide (NO_2) Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that the District of Columbia and seven states (Alaska, Arkansas, Hawaii, Minnesota, New Jersey, Vermont and Washington) have not submitted complete infrastructure State Implementation Plans (SIPs) that provide the basic Clean Air Act (CAA) program elements necessary to implement the 2010 nitrogen dioxide (NO_2) primary national ambient air quality standard (NAAQS). Three out of the seven states (Alaska, Arkansas and Vermont) have not made any submittals. The District of Columbia and the remaining four out of the seven states (Hawaii, Minnesota, New Jersey and Washington) have made submittals that are partially incomplete due to the lack of complete SIP approved Prevention of Significant Deterioration (PSD) permit programs. The purpose of an infrastructure SIP submission is to assure that a state, local or tribal air agency's SIP contains the necessary structural requirements for any new or revised NAAQS. The remaining 43 states have made complete submissions. Each finding of failure to submit a complete infrastructure SIP establishes a 24-month deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to the EPA promulgating a FIP, the affected air agency submits, and the EPA approves, a revised SIP that corrects the deficiency. In those areas without a state-adopted PSD permit program, the FIP obligation has already been met through federal regulations that govern PSD permits issued in some cases by the EPA and in other cases by state or local agencies under delegation agreements.

DATES: Effective date of this action is December 24, 2014.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Ms. Mia South, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541–5550; email: *south.mia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 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. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0337. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

C. How is the preamble organized?

Table of Contents

D. Where do I go if I have specific state questions?

The table below lists the states and additional area (District of Columbia) that failed to make an infrastructure SIP submittal in whole or in part for the 2010 NO_2 NAAQS. For questions related to specific states or areas mentioned in this document, please contact the appropriate EPA Regional Office:

Regional offices	States
EPA Region 1: Dave Conroy, Air Program Branch Manager, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203–2211. 617–918–1661.	Vermont.
EPA Region 2: Richard Ruvo, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866. 212–637–4014.	New Jersey.
EPA Region 3: Cristina Fernandez, Air Division Director, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187. 215–814–2178.	District of Columbia.
EPA Region 5: John Mooney, Air Program Branch Manager, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604–3590. 312–886–6043.	Minnesota.
EPA Region 6: Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. 214–665–7242.	Arkansas.
EPA Region 9: Matt Lakin, Air Program Manager, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. 415–972–3851.	Hawaii.
EPA Region 10: Debra Suzuki, Air Program Manager, Air Planning Unit, EPA Region X, Office of Air, Waste, and Toxics, Mail Code AWT–107, 1200 Sixth Avenue, Seattle, WA 98101. 206–553–0985.	Alaska, Washington.

II. Background and Overview

A. Infrastructure SIPs

The CAA section 110(a) imposes an obligation upon 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 the new or revised NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP because the SIP ensures that states can implement, maintain and enforce the air standards. States are required to develop and maintain an air quality management program that meets various basic structural requirements, including, but not limited to: Enforceable emission limitations; an ambient air monitoring program; an enforcement program; air quality modeling capabilities; and adequate personnel, resources and legal authority.

The contents of an infrastructure SIP 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 infrastructure SIP for a new or revised NAAQS necessarily affect the content of the submission. The content of such an infrastructure SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

On January 22, 2010, the EPA strengthened the health-based primary NAAQS for NO_2. The EPA set a new 1-hour NO_2 standard at the level of 100 parts per billion (ppb). This level defines the allowable concentration in a nonattainment area. In addition to establishing an averaging time and level, the EPA set a new ''form'' for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO_2 standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. Finally, the EPA retained, with no change, the current annual average NO_2 standard of 53 ppb.[1] The obligation to submit an infrastructure SIP was triggered with the revision of the NO_2 NAAQS in 2010, and, because the EPA did not prescribe a shorter deadline, January 22, 2013, was the applicable deadline for such submissions. In the case of the 2010 NO_2 NAAQS, the EPA believes that many of the states have met many of the program elements identified in this document required under section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

B. Mandatory Duty Suit for the EPA's Failure To Make Findings of Failure To Submit for Areas That Did Not Submit Infrastructure SIPs by January 22, 2013

On October 9, 2013, WildEarth Guardians (WEG) filed a complaint in the U.S. District Court for the District of Colorado to enforce the EPA's mandatory duty to make findings of failure to submit with respect to NO_2 infrastructure SIPs for the following states: Colorado, Idaho, New Mexico, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming.[2] On January 24, 2014, Alaska and Hawaii were added to the complaint. These infrastructure SIPs were due on January 22, 2013. Most states identified in the complaint have made complete submissions as of the date of this document. In response to the WEG complaint, the EPA is issuing a national finding of failure to submit certain elements of NO_2 infrastructure SIPs for the requirements of CAA sections 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M), addressing all states (and the District of Columbia) that have not made complete submissions.

C. What elements are outside the scope of infrastructure SIP actions?

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline because SIPs incorporating necessary local nonattainment area requirements 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. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. Therefore, this action does not cover these specific SIP elements. Nonattainment area plans required by part D title I of the CAA for the 2010 NO_2 NAAQS are generally due 18 months after the effective date of designation of an area as nonattainment.

[1] *See* 75 FR 6474, February 9, 2010, Primary National Ambient Air Quality Standard for Nitrogen Dioxide, Final Rule.

[2] Complaint, *WildEarth Guardians* v *EPA*, USDC Colorado, October 9, 2013, Case 1:13–cv–02748–RBJ. The complaint was amended on January 24, 2014, to add Hawaii and Alaska.

However, in the case of NO_2, no area has been designated nonattainment.

III. Findings of Failure To Submit for States That Failed To Make an Infrastructure SIP Submission in Whole or in Part for the 2010 NO_2 NAAQS

Forty-three states have made complete submittals for their respective infrastructure SIPs for the 2010 NO_2 NAAQS. With respect to the remaining seven states and the District of Columbia, the EPA is making findings of failure to submit.

Alaska, Arkansas and Vermont have not made any submittal, and for these the EPA is making a finding of failure to submit with respect to CAA section 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M).

The District of Columbia, Hawaii, New Jersey, Minnesota and Washington have made complete submissions except with respect to the PSD-related requirements of section 110, and for these states the EPA is making a finding of failure to submit with respect to the requirements of CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) to the extent these refer to PSD permitting programs required by part C of title I of the CAA.

To summarize, the EPA is finding that seven states and the District of Columbia have not made a complete infrastructure SIP submission to meet certain requirements of section 110(a)(2) that are relevant to this action, as identified above, for the 2010 NO_2 NAAQS. The EPA is committed to working with the air agencies for these states and the District of Columbia to expedite submissions as necessary, and to working with all air agencies to review and act on their infrastructure SIP submissions in accordance with the requirements of the CAA.

These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1), for each of those states for which the EPA is making a finding unless the EPA has approved a SIP by that date. The District of Columbia, Hawaii, Minnesota and Washington are currently subject to PSD FIPs. New Jersey is currently subject to a combination of a SIP and a FIP for PSD. In these areas, the FIP for PSD is either implemented by the EPA or delegated to a state or local agency for implementation. In these areas, the PSD FIP obligation has already been met through federal regulations that govern PSD permits issued in some cases by the EPA and in other cases by state or local agencies under delegation agreements. The EPA recognizes that states may choose to continue to rely on the existing PSD FIP or a combination of SIP and FIP PSD programs, which will continue to govern the permitting of their sources without the need for further action by the state. If so, then this rulemaking does not require these areas to take further action.

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 part D, title I plan for nonattainment areas as required under section 110(a)(2)(I), and because these states have not failed to make submissions in response to a SIP call pursuant to section 110(k)(5).

IV. Environmental Justice Considerations

This document is making a procedural finding that certain states have failed to submit a complete SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2010 NO_2 NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfy the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide. The EPA did not conduct an environmental analysis for this rule because this rule would not directly affect the air emissions of particular sources. The EPA notes that there are no areas of the U.S. in nonattainment with the health-based NO_2 NAAQS. Because this rule will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. 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 and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

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.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that provide for implementation, maintenance and enforcement of a new or revised NAAQS, and which satisfy the applicable requirements of section 110(a)(2), within 3 years of promulgation of such standard, or within such shorter period as the EPA may provide. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. 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 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The EPA's evaluation of environmental justice considerations is contained in section IV of this document.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(l) of the CAA indicates which federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required infrastructure SIP provisions is ''nationally applicable'' within the meaning of section 307(b)(1). This rule affects the District of Columbia and seven states across the country that are located in seven of the ten EPA Regions, five different federal circuits, and multiple time zones. In addition, the rule addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR part 51, Appendix V applied to determining the completeness of SIPs in states across the country.

This determination is appropriate because in the 1977 CAA Amendments that revised CAA section 307(b)(l), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323–324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this action extends to the five judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of ''nationwide scope or effect'' and thus to indicate that venue for challenges lies in the D.C. Circuit. Accordingly, the EPA is determining that this is a rule of nationwide scope or effect. 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 date this 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 the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

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

Dated: November 14, 2014.

Janet G. McCabe,

Acting Assistant Administrator.

[FR Doc. 2014–27679 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6006–F3]

Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Technical Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects codification, terminology, and technical errors in the requirements for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) at 42 CFR 424.57.

DATES: This technical amendment is effective November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Background

For purposes of the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) supplier standards, the term ''DMEPOS supplier'' is defined in § 424.57(a) as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items to Medicare beneficiaries and that meet the DMEPOS supplier standards. The term ''DMEPOS'' encompasses the types of items included in the definition of medical equipment and supplies in section 1834(j)(5) of the Act.

The term durable medical equipment is defined at section 1861(n) of the Act. Prosthetic devices are defined in section 1861(s)(8) of the Act as ''devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens.''