



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2017-0695, FRL-9972-39-Region 1]

### **Finding of Failure to Submit a Section 110 State Implementation Plan for Interstate Transport for the 2012 Annual National Ambient Air Quality Standards for Fine Particles; Massachusetts**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action finding that Massachusetts failed to submit an infrastructure State Implementation Plan (SIP) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2012 annual fine particles (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). Specifically, these requirements pertain to significant contribution to nonattainment, or interference with maintenance, of the 2012 annual PM<sub>2.5</sub> NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment, interference with maintenance, interference with Prevention of Significant Deterioration, and interference with visibility protection, unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

**DATES:** This final rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R01-OAR-2017-0695. All documents in the dockets are listed on <http://www.regulations.gov>.

Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1684; [simcox.alison@epa.gov](mailto:simcox.alison@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)(3)(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)(3)(B).

*B. How is the Preamble Organized?*

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## **II. Background and Overview**

*A. Interstate Transport SIPs*

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 three years following the promulgation of that 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 it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that

will contribute significantly to nonattainment of the NAAQS in any other state (“prong 1”) or interfere with maintenance of the NAAQS in any other state (“prong 2”). Section 110(a)(2)(D)(i)(II) requires that such a plan contain adequate provisions to prohibit emissions from the state that will interfere with measures required of any other state to prevent significant deterioration of air quality (“prong 3”) or that will interfere with measures required of any other state to protect visibility (“prong 4”). These are the requirements relevant to this finding.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than six months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.” If the EPA finds a state has failed to submit a SIP to meet its statutory obligation to address section 110(a)(2)(D)(i), pursuant to section 110(c)(1) the EPA has not only the authority, but the obligation, to promulgate a FIP within two years to address the CAA requirement. This finding therefore starts a two-year clock for promulgation by the EPA of a FIP, in accordance with section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal to meet the requirements of section 110(a)(2)(D)(i) for the 2012 annual  $PM_{2.5}$  NAAQS. The EPA will work with the state subject to this finding of failure to submit and provide assistance as necessary to help the state develop an approvable submittal in a timely manner. The EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) or a SIP call pursuant to section 110(k)(5).

*B. Background on the 2012 Annual  $PM_{2.5}$  NAAQS*

On December 14, 2012, the EPA promulgated a revised primary annual PM<sub>2.5</sub> NAAQS to provide increased protection of public health and welfare from fine particle pollution.<sup>1</sup> In that action, the EPA revised the primary annual PM<sub>2.5</sub> standard, strengthening it from 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) to 12.0 µg/m<sup>3</sup>, which is attained when the three-year average of the annual arithmetic means does not exceed 12.0 µg/m<sup>3</sup>. Infrastructure SIPs addressing the revised standard were due on December 14, 2015. CAA § 110(a)(1).

### **III. Finding of Failure to Submit for Massachusetts**

To date, Massachusetts has not submitted a good neighbor SIP for the 2012 annual PM<sub>2.5</sub> NAAQS. Accordingly, the EPA is issuing a finding that Massachusetts has failed to submit a SIP addressing the requirements of section 110(a)(2)(D)(i) of the CAA, 42 U.S.C. section 7410(a)(2)(D)(i) (prongs 1-4), for the 2012 annual PM<sub>2.5</sub> NAAQS.

### **IV. Environmental Justice Considerations**

This notice is making a procedural finding that Massachusetts has failed to submit a SIP to address CAA section 110(a)(2)(D)(i) for the 2012 annual PM<sub>2.5</sub> NAAQS. The EPA did not conduct an environmental analysis for this rule, because this rule would not directly affect the air emissions from particular sources. Because this rule will not directly affect the air emissions from 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.

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<sup>1</sup> 78 FR 3086; January 15, 2013.

## **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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action, because it is not a significant regulatory action under Executive Order 12866.

### *C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the PRA, 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.

### *D. 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 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).

### *E. 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.

### *F. 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.

*G. 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 address CAA section 110(a)(2)(D)(i) for the 2012 annual PM<sub>2.5</sub> NAAQS. 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.

*H. 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.

*I. 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.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. 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 notice.

*L. 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).

*M. Petitions for 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 appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental

relations, Interstate transport, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 11, 2017.

Deborah A. Szaro,  
Acting Regional Administrator,  
EPA New England.

[FR Doc. 2017-27625 Filed: 12/22/2017 8:45 am; Publication Date: 12/26/2017]