



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2019-0452; FRL-9999-85-OAR]

Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that two states (Maryland and Michigan) failed to submit State Implementation Plans (SIPs) to satisfy certain nonattainment area planning requirements of the Clean Air Act (CAA) for the 2010 1-hour primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The purpose for the development and implementation of nonattainment area SIPs is to provide for attainment of the NAAQS as expeditiously as practicable following the designation of an area as nonattainment. This action establishes certain CAA deadlines for the EPA to impose sanctions if a state does not submit a complete SIP addressing the outstanding requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

DATES: This action is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Dr. Larry D. Wallace, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C539-01, 109 T.W. Alexander Drive, Research Triangle

Park, NC 27709; by telephone (919) 541-0906; or by email at *Wallace.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment under the Administrative Procedure 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 procedures 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 final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submission to meet the requirement. Thus, notice and public procedures are unnecessary to take this action. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(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-2019-0452. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton Building, Room 3334, 1301 Constitution Avenue NW, Washington, D.C. 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. Where do I go if I have a specific state questions?

For questions related to specific states mentioned in this document, please contact the appropriate EPA Regional Office:

Regional Offices	States
EPA Region 3: Ms. Susan Spielberger, Associate Director, Office of Air Program Planning, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187.	Maryland
EPA Region 5: Mr. Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Michigan

D. How is the preamble organized?

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II. Background

In June 2010, the EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. *See* 40 CFR 50.17(a)-(b). On July 12, 2016, the EPA, as part of the second round of area designations for the 2010 SO₂ NAAQS, designated four areas of the country as nonattainment for the 1-hour primary 2010 SO₂ NAAQS.¹ *See* 81 FR 45039, codified at 40 CFR part 81, subpart C. These area designations had an effective date of September 12, 2016.

Areas designated as nonattainment for the SO₂ NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and to the SO₂-specific planning requirements of subpart 5 of part D of Title I of the CAA (sections 191 and 192). All components of the SO₂ part D nonattainment area SIP, including the emissions inventory,

¹ The EPA completed its first round of initial area designations for the 2010 1-hour primary SO₂ NAAQS on August 5, 2013, with an effective date of October 4, 2013. Under a court order issued on March 2, 2015, the EPA is required to complete designations related to the remaining undesignated areas of the country by no later than December 31, 2020. The findings in this document apply only to those areas that were designated on July 12, 2016, and where, as of signature of this action, the affected states failed to submit required complete plans.

attainment demonstration, reasonably available control measures (RACM) including reasonably available control technology (RACT), enforceable emission limitations and control measures, reasonable further progress (RFP) plan, nonattainment new source review (NNSR), and contingency measures, are due to the EPA within 18 months of the effective date of designation of an area under CAA section 191. Thus, the nonattainment area SIPs for areas designated effective September 12, 2016, were due on March 12, 2018. These SIPs were required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, or by September 12, 2021.

III. Consequences of Findings of Failure to Submit

If the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, including the imposition of mandatory sanctions for the affected area, after a period of time. Additionally, such a finding also triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years after the finding of failure to submit if the affected state has not submitted, and EPA has not approved, the required SIP submittal.

If the EPA has not affirmatively determined that a state has made the required complete SIP submittal for an area within 18 months of the effective date of this rulemaking, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If the EPA has not affirmatively determined that the state has made a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take

effect if, within 18 months after the date of these findings, the EPA affirmatively determines that the affected state has made a complete SIP submittal addressing the deficiency for which the finding was made. Additionally, if the state makes the required SIP submittal and the EPA takes final action to approve the submittal within 2 years of the effective date of these findings, the EPA is not required to promulgate a FIP for the affected nonattainment area.

IV. Findings of Failure to Submit for States that Failed to Make a Nonattainment Area SIP Submittal

As of the date of signature of this action, the two states listed in Table 1 failed to make complete SIP submittals required under part D of Title 1 of the CAA by March 12, 2018, for two areas designated nonattainment effective September 12, 2016.² The EPA is, therefore, issuing

² The EPA is not including in this action findings of failure to submit for the two other areas designated nonattainment effective September 12, 2016: Alton Township, Illinois, and Williamson County, Illinois. With respect to the first area, the state of Illinois submitted a SIP for the Alton Township, Illinois, nonattainment area on December 3, 2018, which was deemed complete on June 5, 2019. *See* letter from Edward Nam, Director, Air and Radiation Division, to Mr. John Kim, Director, Illinois Environmental Protection Agency (June 5, 2019) (included in the rulemaking docket for this final action). With respect to the second area, on September 5, 2019, the EPA Administrator signed a notice of final action titled, “Reconsideration of the Area Designation for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard for Williamson County, Illinois; Final Rule.” This final action changes the initial designation of Williamson County, Illinois, from nonattainment to attainment/unclassifiable, and will be codified at 40 CFR 81.314. The EPA will promptly transmit this signed final action to the Office of the Federal Register for publication. An unofficial copy of the pre-publication signed final action is available at <https://www.epa.gov/sulfur-dioxide-designations/reconsideration-nonattainment-designation-williamson-co-illinois>. Only the version of the signed final action published in the **Federal Register** will be the official version, and it will identify the effective date of the change in designation of Williamson County, Illinois.

findings of failure to submit for the two states responsible for these areas: Anne Arundel County and Baltimore County, Maryland, and St. Clair, Michigan.

Table 1. States and 2010 1-Hour Primary SO₂ NAAQS Nonattainment Areas Affected by These Findings of Failure to Submit:

<u>Regional Office</u>	<u>State</u>	<u>Nonattainment Area</u>
Region III	Maryland	Anne Arundel County and Baltimore County
Region V	Michigan	St. Clair

V. Environmental Justice Considerations

The EPA believes that the human health or environmental risks addressed by this action will not have disproportionately high or 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 under the SO₂ NAAQS. The purpose of this rule is to make findings that the states named in this final action failed to submit the required SIPs to provide for timely attainment of the 1-hour primary SO₂ NAAQS, which will result in certain CAA-required deadlines for actions to provide for such attainment. In finding that certain states failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO₂ NAAQS, this action does not adversely affect the level of protection provided for human health or the environment. Rather, it is intended that the actions and deadlines resulting from this notice will in fact lead to greater protection for United States citizens, including minority, low-income, or indigenous populations, by ensuring that states meet their

statutory obligation to develop and submit SIPs to ensure that areas make progress toward attaining the 1-hour primary SO₂ NAAQS.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning 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 finds that two states failed to meet the requirement in the CAA to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the SO₂ NAAQS.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) which address the statutory requirements that apply to areas designated as nonattainment for the SO₂ NAAQS.

D. Regulatory Flexibility Act (RFA)

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

The rule is a finding that the named states have not made the necessary SIP submission for certain nonattainment areas to meet the requirements of part D of title I of the CAA.

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 imposes no enforceable duty on any state, local or tribal governments or the private sector.

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 finds that two states have failed to complete the requirement in the CAA to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the SO₂ NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 5 of part D of Title I of the CAA. 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 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 is a finding that certain states have failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA and does not directly or disproportionately affect children.

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 (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority 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. In finding that certain states have failed to submit a complete SIP that satisfies the nonattainment area planning requirements under section 172 and subpart 5 of part D of Title I of the CAA, this action does not adversely affect the level of protection provided to human health or the environment.

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. Judicial Review

Section 307(b)(1) 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 required SIP provisions for two nonattainment areas for the 2010 primary 1-hour SO₂ NAAQS is "nationally applicable" and that it is "of nationwide scope and effect" within the meaning of CAA section 307(b)(1). This final agency action affects two nonattainment areas that are located in two states, residing in two of the ten EPA Regional Offices and covered by two different federal judicial circuits. 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 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)(1), 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 two judicial circuits that include the two states affected by this action. In these circumstances, CAA 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 reconsideration 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. Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*.

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 2019.

Anne L. Idsal,
Acting Assistant Administrator.
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