State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.27.	NO_X Allowance Program.	12/19/97	6/2/99	[Insert FR citation from published date].	(c)(118)	Approval of NOx cap and allowance trading regulations
*	*	*	*	*	*	*

Subpart OO—Rhode Island

4. Section 52.2070 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2070 Identification of plan

* * * * *

(c) * * *

(55) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on February 13, 1998 and January 20, 1999 which define alternative NO_X RACT requirements and impose seasonal limitations on the emissions of nitrogen oxides at certain major stationary sources in Rhode Island.

(i) Incorporation by reference.

(A) Letters from the Rhode Island Department of Environmental Management, dated February 13, 1998 and January 20, 1999 submitting revisions to the Rhode Island State Implementation Plan.

(B) Regulation number 38, ''Nitrogen Oxides Allowance Program,'' as adopted on May 21, 1998, submitted on effective on June 10, 1998.

(C) An administrative consent agreement between Rhode Island Department of Environmental Management and Rhode Island Economic Development Corporation, file no. 96–04–AP, adopted and effective on September 2, 1997.

5. In § 52.2081, Table 52.2081 is amended by revising the state citation for Regulation No. 27 and by adding a new state citation for Regulation No. 38, ''Nitrogen Oxides Allowance Program'' to read as follows:

§ 52.2081—EPA—approved Rhode Island state regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*	*	*	*	*	*
No. 27	Control of Nitrogen Oxides Emissions.	9/2/97	6/2/99	[Insert FR citation from published date].	(c)(55)	Establishes alternative NOx RACT for Rhode Island Economic Development Corporation in North Kingstown, RI
*	*	*	*	*	*	*
No. 38	Nitrogen Oxides Allowance Program.	5/21/98	6/2/99	[Insert FR citation from published date].	(c)(55)	Adds ozone season NOx emission limitations at certain stationary sources.
*	*	*	*	*	*	*

[FR Doc. 99–13026 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 107–1–7407; FRL–6349–3]

Finding of Failure To Submit Required State Implementation Plans for Ozone; Texas; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We, the EPA, are taking final action to find that the State of Texas failed to submit the required State Implementation Plan (SIP) for the Dallas/Fort Worth (DFW) ozone nonattainment area, as required by the Federal Clean Air Act (Act). The required submittal is the serious area plan requirements for attainment of the ozone National Ambient Air Quality Standards (NAAQS). The deadline for the State to make the submittal was

March 20, 1999. The State submitted a SIP for the DFW area on March 18, 1999. The submittal included an attainment demonstration, a Rate-Of-Progress (ROP) Plan, and revisions to the State's rules for Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT), and NO_X New Source Review, to make them applicable to the DFW area. We find that the attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999, as required by the Act. We find that the ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period as required by the Act. The finding of an incomplete submittal for the attainment demonstration and the ROP Plan triggers the 18-month time clock for mandatory application of sanctions and a two-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the Act's mechanism for assuring timely SIP submissions.

EFFECTIVE DATE: May 13, 1999.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr. of the EPA Region 6 Air Planning Section at (214) 665–7237 or at the address above.

SUPPLEMENTARY INFORMATION:

I. Final Action

What Action is EPA Taking?

We find that the State of Texas failed to submit by March 20, 1999, all elements of the SIP revisions necessary for the DFW ozone nonattainment area to meet the Act's serious area plan requirements for the 1-hour ozone NAAQS under section 182(c).

The elements that the State failed to submit are a complete attainment demonstration as required by section 182(c)(2)(A)and a complete post-1996 ROP Plan under section 182(c)(2)(B) and (C).

This finding starts the sanctions clocks in section 179(a) and FIP clock in section 110(c). If Texas has not corrected and resubmitted the complete serious area plan elements by November 13, 2000, the offset sanction in section 179(b)(2) and 40 CFR 52.31 will be imposed on the DFW nonattainment area. If Texas still has not corrected and resubmitted the complete serious area plan elements by May 14, 2001, the highway funding sanction in section 179(b)(1) will also be imposed in accordance with the Act and 40 CFR 52.31. Also, section 110(c) of the Act requires EPA to promulgate a FIP no later than two years after a finding of failure to submit.

What is the Effective Date for This Rule?

The effective date for this rule is May 13, 1999, the date this action was signed.

The EPA is treating this action as a ''rule.'' Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rule makings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns implementation plan submittals that are already overdue and for which the State of Texas has submitted some incomplete elements. We have previously alerted Texas through our public comments and meetings that the SIP submittal, as proposed, would not be complete. Also, on May 3, 1999, we sent a letter to Texas stating that we were planning to take the action we are taking today. Consequently, the State has been on notice that today's action was pending. The State and general public are aware of applicable provisions of the Act that relate to failure to submit a required implementation plan. In addition, this action simply starts a sanctions/FIP clock that will not result in offset sanctions for 18 months and that the State may stop by submitting a serious ozone area implementation plan that is complete under section 110(k) of the Act and approvable under section 110 and part D of the Act. These reasons support an effective date prior to 30 days after the date of publication.

Why is EPA Taking This Action Without Proposing and Taking Comments First?

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). We believe that, because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception in the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of an implementation plan required by the Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the Act for making such determinations.

Finally, notice and comment would be contrary to the public interest because it would divert our resources from the critical substantive review of submitted implementation plans. *See* 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

II. Background

Why is This SIP Submittal Required?

We reclassified the DFW area from moderate to serious ozone status on February 18, 1998, since the area had not attained the NAAQS by November 15, 1996 (63 FR 8128). As a result, the State was required to submit a serious area SIP by March 20, 1999. The SIP required attainment and rate of progress demonstrations and revised rules for major source thresholds and a more stringent New Source Review program.

The state submitted revisions to its rules for NO_X RACT, NO_X NSR, and VOC RACT with the March 18, 1999, submittal. We have reviewed these rules for administrative completeness and found them complete on the date of completeness finding. We will take action on them in separate **Federal Register** notices.

The State had already submitted the other elements of a serious area plan (e.g.; enhanced Inspection and Maintenance Program and a Clean Fuel Fleet program).

Why is the Attainment Demonstration and the Rate-of-Progress Plan Incomplete?

The attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999 (section 182(c)(2)(A)). The photochemical modeling submitted is sensitivity modeling which only identifies emission reduction targets

with no specific control strategy or attainment date.

The ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period (section 182(c)(2)(B)). The plan shows a VOC target of 28.68 tons per day and reductions of 22.81 tons per day which leaves the plan 5.87 tons per day short of meeting the target. The plan does not substitute NO_X reductions and meet the target (section 182(c)(2)(C). The Plan's NO_X table, on its face, considers NO_X reductions but those NO_X reductions do not offset growth in NO_X emissions since 1990; therefore, they are not creditable to the shortfall.

What are the Consequences of This Action?

The Act establishes specific consequences if a state fails to submit a required SIP. These consequences include the mandatory sanctions provision in section 179(a)(1) and the federal planning requirement in section 110(c).

Under section 179(a) and 40 CFR 52.31, if Texas has not corrected the incomplete elements and resubmitted a complete SIP within 18 months of the effective date of today's rulemaking, the 2 to 1 offset sanction of section 179(b) will apply in the DFW nonattainment area. This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every new ton the new/modified facility will emit.

If the State has still not corrected the incomplete elements and resubmitted a complete SIP six months after the offset sanction is imposed, then the highway approval and funding sanction will apply in the nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offsets sanctions first then highway sanctions, is documented in our regulations at 40 CFR 52.31.

In addition to these sanctions, section 110(c) requires us to issue a FIP no later than two years after a finding under section 179(a). This FIP would need to address any outstanding serious area ozone requirements for an attainment demonstration and a ROP Plan that we had not yet approved.

The sanctions will not be imposed if, prior to the implementation date of the offset sanction, we determine that the State has submitted a complete plan addressing the two incomplete elements of the serious area ozone requirements for the DFW area. If the state relies on the control measures in the existing approved contingency plan for its ROP Plan and/or attainment demonstration, the State would also need to submit a new contingency plan. In addition, we are not required to promulgate a FIP if the State makes the required SIP submittals and we take final action to approve the submittals within two years of the effective date of today's finding.

This preamble merely summarizes the Act's requirements for serious ozone area plans and the Act's provisions regarding the consequences of the failure to submit a required implementation plan. The specific language of the Act and our regulations and policies interpreting the Act, rather than the language of this document, govern the exact submittals required from the State and the implementation of any sanctions.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing The Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on any of these entities. This action implements EPA's requirements to review SIPs for completeness under 40 CFR Part 51, Appendix V. The SIP submission requirements for stopping clocks are not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health or safety-based standard.

D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide

meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Since this final rule is not subject to notice-and-comment requirements under the APA, or any other statutes, it is not subject to sections 603 or 604 of the RFA. Furthermore, this action will not have a significant impact on a substantial number of small entities because these findings under section 110 and subchapter I, part D of the Act do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FEC,* 773 F.2nd 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this action makes findings of failure to submit and establishes a schedule for Texas to stop the clocks and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to this action because the findings that Texas failed to submit the required SIP for the DFW area do not, in-and-of-themselves constitute a Federal mandate, because they do not impose any enforceable duty on any entity. In addition, the Act does not permit EPA to consider the type of analyses described in section 205 in determining whether a State has failed to submit a required SIP. Finally, section 203 does not apply to the action because the SIP submittal schedule to stop the clocks would only affect the State of Texas, which is not a small government.

G. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(z). As stated previously, EPA has made a good cause finding, including the reasons therefor, and established an effective date of May 13, 1999, the date of signature. The EPA will submit a report containing this rule 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 rule in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This rule does not contain any information requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. 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, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 13, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–13806 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–034–0016; FRL–6350–5]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Nevada State Implementation Plan (SIP) proposed in the **Federal Register** on December 11, 1998. This action specifically includes approval of revisions to Clark County Health District's wintertime oxygenated fuels program. This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of carbon monoxides (CO) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the Nevada SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 2, 1999.

ADDRESSES: Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of these documents are