■ 3. Section 52.975, entitled, ''Redesignations and maintenance plans; ozone'', is amended by adding a new paragraph (i) as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(i) Approval. The Louisiana Department of Environmental Quality (LDEQ) submitted 8-hour ozone maintenance plans for the Lafayette and Lafourche Parish areas on October 13, 2006 and December 19, 2006, respectively. The two areas are designated unclassifiable/attainment for the 8-hour ozone standard. EPA determined these requests for Lafayette and Lafourche Parishes were complete on November 30, 2006 and May 2, 2007, respectively. These maintenance plans meet the requirements of section 110(a)(1) of the Clean Air Act, and are consistent with EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 8-hour ozone maintenance plans for the Lafayette and Lafourche Parish areas on *March 24, 2008*.

[FR Doc. E8–5800 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2008–0072; FRL–8545–5]

Finding of Failure To Submit State Implementation Plans Required for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is taking a final action finding that several states have failed to submit State Implementation Plans (SIPs) to satisfy certain requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). Under the CAA and EPA's implementing regulations, states with nonattainment areas classified as moderate, serious, severe or extreme were required to submit by June 15, 2007, SIPs: Demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than the applicable dates established in the implementing regulations; and demonstrating reasonable further progress (RFP). Additionally, states were required by September 15, 2006, to submit for these same areas SIPs demonstrating that sources specified under the CAA were subject to reasonably available control technology requirements (RACT). States that are part of the Ozone Transport Region (OTR) were required to submit SIPs to meet the 1997 8-hour ozone RACT requirement for the entire state by September 15, 2006. The RACT requirement applies to all areas within the Ozone Transport Region, regardless of the area's designation for the 1997 8-hour ozone standard. Some states have not yet submitted SIPs to satisfy these requirements. The EPA is by this action making a finding of failure to submit for those nonattainment areas and OTR areas that have not made the required SIP submission(s). If EPA has not affirmatively found that the state has submitted the required plan or plans within 18 months, the offset sanction applies in the area. If within 6 additional months EPA has still not affirmatively determined that the state has submitted the required plan, the highway funding sanction applies in an area if it is designated nonattainment. No later than 2 years after EPA makes the finding, EPA must promulgate a Federal Implementation Plan if the state has not submitted and EPA has not approved the required SIP.

DATES: *Effective Date:* This action is effective on March 24, 2008.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Butch Stackhouse, 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) 541–5208.

SUPPLEMENTARY INFORMATION: For questions related to a specific state please contact the appropriate regional office:

Regional offices	States
Dave Conroy, Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02203–2211.	Maine, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866.	New York.
Christina Fernandez, Acting Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Virginia.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Ohio, and Wisconsin.
Dave Jesson, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	California.

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N. Judicial Review

I. Background

The CAA requires states with areas that are designated nonattainment for the 1997 8-hour ozone NAAQS to develop a SIP providing how the state will attain and maintain the NAAQS. Part D of title I of the CAA specifies the required elements of a SIP for an area designated nonattainment. These requirements include, but are not limited to, RFP, RACT, and an attainment demonstration. *See* CAA sections 172 and 182. In addition, states that are part of the Ozone Transport Region (OTR) must submit SIPs meeting the 1997 8-hour ozone RACT requirement for the entire state or the portion of the state in the OTR. A number of states have submitted RFP, RACT and attainment demonstration SIPs as required under the CAA and EPA's implementing regulations, but at present, some states have not yet submitted SIPs to satisfy these requirements of the CAA. The EPA is by this action making a finding of failure to submit for those areas that have not yet submitted these required SIPs.

A. Statutory Requirements

On July 18, 1997, EPA issued a revised ozone standard. At that time, the ozone standard was 0.12 ppm measured over a 1-hour period. EPA revised the NAAQS to rely on an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). EPA's initial implementation strategy for the 1997 8-hour standard was vacated and remanded by the Supreme Court. *Whitman* v. *American Trucking Associations, Inc.*, 531 U.S. 457 (2001). On April 30, 2004 (69 FR 23951) and on November 29, 2005 (70 FR 71612), EPA published final rules that addressed the elements related to implementation of the 1997 8-hour ozone NAAQS (Phase 1 and Phase 2 Implementation Rules). In an April 30, 2004 rulemaking (69 FR 23858) EPA designated attainment and nonattainment areas for the 1997 8-hour ozone standard, and specified the classification for each nonattainment area. The 1997 8-hour ozone designations took effect on June 15, 2004. The November 30, 2005 Phase 2 implementation rule set forth deadlines for state and local governments to develop and submit to EPA implementation plans designed to meet the 1997 8-hour standard by reducing air pollutant emissions contributing to ground-level ozone concentrations. The Phase 2 Rule required states with nonattainment areas to submit SIPs by June 15, 2007 demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than specified dates and demonstrating how the area would make reasonable further progress toward attainment in the years prior to the attainment year. Additionally, the Phase 2 Rule required states to submit SIPs requiring RACT for nonattainment areas and for areas within the OTR by September 15, 2006.

B. Consequences of Findings of Failure To Submit

The CAA establishes specific consequences if EPA finds that a state has failed to submit a SIP or, with regard to a submitted SIP, EPA determines it is incomplete or disapproves it. CAA section 179(a)(1). Additionally, any of these findings also triggers an obligation for EPA to promulgate a Federal Implementation Plan (FIP) if the states have not submitted and EPA has not approved the required SIP within 2 years of the finding. CAA section 110(c). The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

EPA is finding that 11 states have failed to make required SIP submissions for 11 nonattainment areas and 3 states or portions of states in the Ozone Transport Region. If EPA has not affirmatively determined that a state has made the required complete submittals for an area within 18 months of the effective date of this rulemaking, 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 area subject to the finding. If 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 areas designated nonattainment, in accordance with CAA section 179(b)(1) and 40 CFR 52.31.[1] The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the state has made a complete submittal as to each of the SIPs for which these findings are made. In addition, EPA is not required to promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's finding.

At approximately the same time as the signing of this notice, EPA Regional Administrators are sending letters to the states informing each state identified below that EPA is determining that they have failed to make one or more of the required SIP submissions for the specified areas. These letters, and any accompanying enclosures, have been included in the docket to this rulemaking.

II. This Action

In this action, EPA is making a finding of failure to submit for states that have failed to make certain required SIP submittals. This finding starts the 18-month emission offset sanctions clock, 24-month highway funding sanctions clock and a 24-month clock for the promulgation by EPA of a FIP. This action will be effective on March 24, 2008. The following states failed to make an attainment demonstration, reasonable further progress, or reasonably available control technology submittal required under Part D of Title 1 of the CAA for the specific area(s) identified below.

The areas for which states that did not submit the RACT SIP, RFP SIP, and/or the attainment demonstration SIP are as follows:

Attainment Demonstrations [2]

NH, Boston-Manchester-Portsmouth (SE) Area
NY, Jefferson County Area
RI, Providence (all of RI) Area
IL, Chicago-Gary-Lake County Area
IN, Chicago-Gary-Lake County Area
WI, Milwaukee-Racine Area
WI, Sheboygan Area

RACT SIPs [3]

RI, Providence (all of RI) Area
VT, entire state in Ozone Transport Region
ME, entire state of Maine for the OTR VOC RACT requirement
ME, entire state of Maine for the OTR NO_X RACT requirement, with the exception of those areas that received a NO_X waiver [4]

[1] In accordance with section 179(b)(1)(A), the highway funding sanction only applies in areas designated nonattainment for the relevant standard and thus would not apply in the portions of the OTR subject to RACT, but not designated nonattainment.

[2] This finding is for the attainment demonstration requirement in section 182(b)(1), 182(c)(2)(A) and 182(d) and 40 CFR 51.908.

[3] Except as noted, this finding is for the RACT SIPs required under CAA section 182(b)(2) for VOC and section 182(f) for NO_X. This requirement applies to moderate areas under 182(b)(2) and applies to serious, severe and extreme areas as provided in CAA section 182(c), (d) and (e), respectively.

[4] On February 3, 2006 (71 FR 5791), EPA approved a NO_X waiver for Northern Maine (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, and portions of Hancock and Waldo Counties). This approval exempts major sources of NO_X in this area from the requirements to implement controls meeting RACT.

VA, Stafford County
IL, Chicago-Gary-Lake County Area
IL, St. Louis Area for NO_X RACT requirement
IN, Chicago-Gary-Lake County Area
OH, Cleveland-Akron-Lorain Area for VOC RACT requirement

RFP SIPs [5]

RI, Providence (all of RI) Area
NH, Boston-Manchester-Portsmouth (SE) Area
NY, Jefferson County Area
IL, Chicago-Gary-Lake County Area
IN, Chicago-Gary-Lake County Area
WI, Milwaukee-Racine Area
WI, Sheboygan Area
CA, Western Mojave Desert
CA, Sacramento Metro Area
CA, Ventura County (part) Area

A. Clean Air Determination Areas Receiving a Finding of Failure To Submit

For areas designated as ''moderate nonattainment'' areas, the CAA requires states to develop SIPs describing how the state will attain and maintain the ozone standard; such SIPs were to have been submitted to EPA by June 15, 2007. The Boston-Manchester-Portsmouth (SE) area in NH and Jefferson County, NY are designated ''moderate nonattainment.'' EPA has published proposed determinations that both areas are in attainment of the 1997 8-hour ozone NAAQS. *See* 73 FR 7234 (February 7, 2008), and 73 FR 8637 (February 14, 2008). These actions were taken in consideration of several years of air quality data in these areas showing attainment of the NAAQS and in consultation with the states. In the case of Jefferson County, on June 14, 2007 New York submitted to EPA a formal clean data request.

EPA is proceeding with rulemaking on the clean data determinations for these two areas. A final determination of attainment would suspend the attainment demonstration and RFP SIP requirements of 40 CFR 50.918. EPA expects to take final action on these determinations as soon as possible. If EPA issues a final determination of attainment, it will stay the sanctions and FIP clocks. The stay for the 2:1 emission offset sanction, highway sanction and FIP promulgation clocks will continue for as long as the area air quality continues to attain the 1997 8-hour ozone standard. The clocks will be permanently turned off if the areas are redesignated to attainment.

EPA is issuing findings of failure to submit to New Hampshire for the Boston-Manchester-Portsmouth (SE) area and to New York for the Jefferson County Area. As noted earlier, EPA has published proposed determinations that both areas are in attainment of the 1997 8-hour ozone NAAQS. Pursuant to 40 CFR 51.918, the states' obligation to submit the reasonable further progress and attainment demonstrations will be stayed as of the effective date of a final approval of the clean air determination for these areas. This stay will remain in effect for so long as the area remains in attainment and will no longer apply if the area is redesignated to attainment.

B. OTR Attainment Areas Receiving a Finding of Failure To Submit

The states of Maine and Vermont and Stafford County, VA have 8-hr ozone RACT requirements because they are part of the OTR.[6] The EPA is issuing a finding of failure to submit to Maine, Vermont and Virginia because they have not met the requirement (40 CFR 51.916(b)). EPA understands that these three states are each working on a certification that the RACT rules the states adopted and EPA approved under the 1-hour ozone standard meet the RACT requirements applicable for the 1997 8-hour ozone standard. The FIP clocks will be stopped when the states submit and EPA approves the RACT SIP. This is a formal SIP submittal and the states must complete their notice-and-comment process prior to submission. Maine, Vermont and Virginia should be able to complete the process and submit the SIPs in time for EPA to take rulemaking action on the submissions before the 24-month FIP clock expires. These OTR areas are subject to nonattainment NSR and, therefore, would be subject to the 2:1 emission offset sanctions if they fail to submit RACT rules EPA affirmatively determines are complete within 18 months of this finding. Because the areas are in attainment, the highway funding sanction would not apply (40 CFR 52.31(e)(2)).

C. Findings of Failure To Submit RFP Plans in California

EPA is making findings of failure to submit RFP plans for the following three areas in California: Los Angeles-San Bernardino Counties (Western Mojave Desert), Ventura, and Sacramento Metro nonattainment areas. The findings of failure to submit are being made because these areas did not submit the RFP plans that were due on June 15, 2007. On February 14, 2008, the state submitted a formal request to EPA to voluntarily reclassify: (1) Western Mojave Desert from moderate to severe-17; (2) Ventura from moderate to serious; and (3) Sacramento Metro from serious to severe-15. Although EPA must grant such voluntary reclassification, a reclassification does not provide a basis for extending the submittal deadlines for SIP elements that were due for these areas' initial classifications. Consequently this finding of failure to submit is based on the states' failure to submit the RFP plans that were due on June 15, 2007 for the area's current classification; this finding does not apply with regard to any additional RFP obligations that would be triggered by the reclassification of these areas. The February 14, 2008 letter included a commitment to submit to EPA the RFP for the current classifications for the three areas, as well as the RFP and attainment requirements for the requested higher classification for the Western Mojave Desert and Ventura areas by April 30, 2008. With respect to the Sacramento Metro area, we note that the state has submitted an RFP SIP for the 2008 milestone. Thus the finding applies only to the RFP component required for the 2011 milestone.

Both the Ventura and Western Mojave Desert areas are downwind from the South Coast Air Basin (metropolitan Los Angeles), and the state has indicated that RFP in the areas must depend in part upon reductions in the South Coast area. The Phase 2 Rule to implement the 1997 8-hour NAAQS set forth a policy that emission reductions from outside a nonattainment area could be credited toward the 1997 8-hour ozone RFP requirement. The rule stated that credit could be taken for VOC and NO_X emission reductions within 100 km and 200 km respectively outside the nonattainment area (70 FR 71647; November 29, 2005). However, if a regional NO_X control strategy were in place in the state, reductions could be taken from within the state. On July 17, 2007, EPA requested a partial voluntary remand from the Court of Appeals for the District of Columbia Circuit on this policy provision. This provision was challenged by the Natural Resources Defense Council (NRDC). EPA's $PM_{2.5}$ Implementation Rule (72 FR 20586, April 25, 2007) adopted a different approach for crediting reductions of precursor pollutants from ''outside'' the nonattainment area for ROP/RFP purposes.[7] Because the $PM_{2.5}$

[5] This finding is for the RFP requirement under CAA sections 172(c)(2) and 182(b)(1). *See* also 40 CFR 51.910.

[6] The remaining portion of Virginia that is in the OTR is also part of the Washington DC-MD-VA moderate 1997 8-hour ozone nonattainment area. EPA has received a RACT SIP addressing Virginia's OTR and moderate RACT requirements for the Washington DC-MD-VA moderate 1997 8-hour ozone nonattainment area.

[7] ''If the state justifies consideration of precursor emissions for an area outside the nonattainment

Implementation Rule significantly modified the policy regarding which emissions reductions are eligible to be credited towards a nonattainment area's RFP requirement, EPA asked for a partial voluntary remand of the Phase 2 Ozone Rule to consider whether it should be revised for consistency with the $PM_{2.5}$ Implementation Rule. In response to EPA's request for a partial voluntary remand of the Phase 2 Ozone Rule, NRDC asked the court for a vacatur, i.e., to nullify this provision. The Court ultimately granted NRDC's petition for vacatur. EPA issued a memorandum on October 11, 2007 stating that we: (1) Sought a voluntary remand, (2) would be revising the rule, and (3) advised the Regional Offices not to approve ROP/RFP SIPs that obtained VOC or NO_X reductions from outside the nonattainment area until the new rulemaking was finalized.[8]

EPA is currently developing a proposed rule to address the court's vacatur of the provision in the Phase 2 Ozone Implementation Rule that allowed nonattainment areas to take credit for emission reductions outside the nonattainment area from selected sources which differed from what was in the $PM_{2.5}$ Implementation Rule. Until we issue that final rule, we could take rulemaking action on the RFP SIPs on a case-by-case basis. We plan to issue the final rule as soon as possible. However, sanctions clocks will terminate when states make submittals that EPA affirmatively determines are complete and the FIP clocks can be turned off if we take final action to approve the RFP plans.

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, 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, EPA invokes the good cause exception pursuant to 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 SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

B. Effective Date Under the Administrative Procedure Act

This action will be effective on March 24, 2008. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that are already overdue; and EPA previously cautioned the affected states that the SIP submissions were overdue and that EPA was considering taking this action. In addition, this action simply starts a ''clock'' that will not result in sanctions against the states for 18 months, and that the states may ''turn off'' through the submission of complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication.

C. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. However, the EPA submitted this action to the Office of Management and Budget (OMB) for review on February 12, 2008 and any changes made in response to OMB's recommendations have been documented in the docket for this action. The OMB released it on March 14, 2008.

D. 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*. This rule relates to the requirement in the CAA for states to submit SIPs under section Part D of title I of the CAA to satisfy elements required for the 1997 8-hour ozone NAAQS. The present final rule does not establish any new information collection requirement. Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR part 9.

E. Regulatory Flexibility Act (RFA)

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on state, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandate'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the

area, EPA will expect state RFP assessments to reflect emissions changes from all sources in this area. The State cannot include only selected sources providing emission reductions in the analysis.'' (72 FR at 20636 (4/25/07).)

[8] ''Partial Voluntary Remand Sought in the Ozone Phase 2 Rule Concerning Rate of Progress (ROP) Reductions Obtained From Outside a Nonattainment Area'' Memorandum of October 11, 2007.

UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

This action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either state, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 1997 8-hour ozone NAAQS (62 FR 38652; 62 FR 38856, July 18, 1997), therefore, no UMRA analysis is needed. EPA has determined that this action is not a Federal mandate. The CAA provisions requires states to submit SIPs. This notice merely provides a finding that the states have not met the requirement to submit certain SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. This notice does not, by itself, require any particular action by any state, local, or Tribal government; or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

G. 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 final rule 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 and the Federal Government acts as a backstop where states fail to take the required actions. This rule 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 rule.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

EPA has concluded that this final rule will not have Tribal implications. It will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This rule responds to the requirement in the CAA for states to submit SIPs to satisfy the nonattainment area requirements of the CAA for the 1997 8-hour ozone NAAQS. The CAA requires states with areas that are designated nonattainment for the NAAQS to develop a SIP describing how the state will attain and maintain the NAAQS. There are Tribal governments within certain nonattainment areas for which this rule turns on a sanctions clock. However, this rule does not have Tribal implications because it does not impose any compliance costs on Tribal governments nor does it pre-empt Tribal law. The rule will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

I. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: ''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 Executive Order 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.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action should reduce the levels of harmful pollutants in the air that should reduce harmful effects on children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In this action, EPA is finding that several states have failed to submit SIPs to satisfy certain nonattainment area requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS).

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

Executive Order 12898 (59 FR 7629 (February 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice finds that certain states have not met the requirement to submit one or more SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. If the states fail to submit the required SIPs or if they submit SIPs that EPA cannot approve, then EPA will be required to develop the plans in lieu of the states.

L. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, (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.

M. 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 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**. 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 rule will be effective March 24, 2008.

N. 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 Court within 60 days from the date final action is published 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 must be filed, and shall not postpone the effectiveness of such rule or action.

Thus, any petitions for review of this action making findings of failure to submit RACT, RFP, and attainment demonstration SIPs for the nonattainment areas identified in section II above, 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

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 17, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

[FR Doc. E8–5807 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2006–0971; FRL–8544–2]

RIN 2060–AO86

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the National Volatile Organic Compound Emission Standards for Aerosol Coatings final rule, which is a rule that establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act, published elsewhere in this **Federal Register**. This direct final action clarifies and amends certain explanatory and regulatory text in the Aerosol Coatings final rule, as the final rule contains misstatements and possibly confusing language on how compounds are added to the list in Tables 2A, 2B or 2C—Reactivity Factors, and when distributors and retailers are regulated entities responsible for compliance with the final rule.

DATES: This direct final rule is effective on June 23, 2008, without further notice, unless EPA receives adverse comment by April 23, 2008, or May 8, 2008, if a public hearing is held. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in the final rule will not take effect.

Comments. Written comments must be received by April 23, 2008, unless a public hearing is requested by April 3, 2008. If a hearing is requested, written comments must be received by May 8, 2008.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning the proposed regulation by April 3, 2008, we will hold a public hearing on April 8, 2008.

ADDRESSES: Comments. Submit your comments, identified under Docket ID No. EPA–HQ–OAR–2006–0971 by one of the following methods:

- *www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*
- *Fax:* (202)–566–9744
- *Mail:* National Volatile Organic Compound Emission Standards for Aerosol Coatings, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., EPA Headquarters Library, Room 3334, EPA West Building, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–