

The EPA Administrator, Gina McCarthy, signed the following notice on 1/13/2017, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2016-0646. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA-HQ-OAR-2016-0646; FRL -]

Findings of Failure to Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finding that 15 states and the District of Columbia have failed to submit State Implementation Plan (SIP) revisions in a timely manner to satisfy certain requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS) that apply to nonattainment areas and/or states in the Ozone Transport Region (OTR). As explained in this action, consistent with the Clean Air Act (CAA) and EPA regulations, these findings of failure to submit establish certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

DATE: The effective date of this action is **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Stephen Senter, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504-2, 109 TW Alexander Drive, Research Triangle Park,

NC 27709; by telephone (919) 541-3042; or by email at senter.stephen@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 a finding of failure to submit SIPs, or elements of SIPs, because the finding is required by the CAA where states have made no submissions to meet the SIP requirements, or where the EPA has separately determined that they made incomplete submissions. Thus, notice and public procedures are unnecessary. 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-2016-0646. All documents in the docket are listed on <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form through <http://www.regulations.gov>.

C. Where do I go if I have a specific state question?

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

Regional Offices	States
EPA Region 1: Anne Arnold, Chief, Air Quality Planning Unit, EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02203.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
EPA Region 2: Rick Ruvo, Chief, Air Program Branch, EPA Region 2, 290 Broadway, New York, NY, 10007.	New Jersey
EPA Region 3: Maria Pino, Acting Associate Director, Office of Air Program Planning, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia
EPA Region 5: John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Wisconsin
EPA Region 9: Doris Lo, Chief, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.	California

D. How is the preamble organized?

Table of Contents

- I. General Information
 - A. Notice and Comment under the Administrative Procedure Act (APA)
 - B. How can I get copies of this document and other related information?
 - C. Where do I go if I have specific state questions?
 - D. How is the preamble organized?
- II. Background
- III. Consequences of a Finding of Failure to Submit
- IV. Findings of Failure to Submit for States that Failed to Make a Nonattainment Area and/or Ozone Transport Region SIP Submittal
- V. Environmental Justice Considerations

VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act of 1995 (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low-Income Populations
- K. Congressional Review Act (CRA)
- L. Judicial Review

II. Background

On March 27, 2008, the EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards.¹ In that action, the EPA promulgated identical revised primary and secondary ozone standards, designed to protect public health and welfare, of 0.075 parts per million (ppm).² Those standards are met when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm.³

Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards; for ozone

¹ 73 FR 16436.

² Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as “the 2008 ozone NAAQS” or “the 2008 ozone standard.”

³ 40 CFR 50.15.

NAAQS, this also involves classifying any nonattainment areas at the time of designation.⁴ Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's “design value,” which represents air quality in the area for the most recent 3 years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme.⁵ Nonattainment areas with a “lower” classification have ozone levels that are closer to the standard than areas with a “higher” classification.⁶

On May 21, 2012, and June 11, 2012, the EPA issued rules designating 46 areas throughout the country as nonattainment for the 2008 ozone NAAQS, effective July 20, 2012, and establishing classifications for the designated nonattainment areas.⁷ Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. States in the OTR are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a Marginal area, a state is required to submit a baseline emissions inventory and adopt a SIP requiring emissions statements from stationary sources and implementing a Nonattainment New Source Review (NNSR) program for the relevant ozone standard.⁸ For a

⁴ CAA sections 107(d)(1) and 181(a)(1).

⁵ CAA section 181(a)(1).

⁶ See 40 CFR 51.1103 for the design value thresholds for each classification for the 2008 ozone NAAQS.

⁷ 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012).

⁸ CAA section 182(a).

Moderate area, a state needs to comply with the Marginal area requirements, plus additional requirements, including the requirement to submit a demonstration that the area will attain in 6 years, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program. For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.⁹ Upon promulgation of the 2008 ozone NAAQS, states in the OTR were required to submit a SIP revision for RACT.¹⁰ This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS. In that case, the nonattainment requirements described above also apply to those portions of that state.

On March 6, 2015, the EPA established a final implementation rule for the 2008 ozone NAAQS (2008 Ozone SIP Requirements Rule).¹¹ The purpose of that action was to detail the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provide specific deadlines for SIP submittals.

Reasonably Available Control Technology

⁹ CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

¹⁰ 40 CFR 51.1116.

¹¹ 80 FR 12264.

Subpart 1 of part D of title I of the CAA includes a requirement that the SIP for a nonattainment area must provide for the implementation of all reasonably available control measures (otherwise referred to as Reasonably Available Control Measures) as expeditiously as practicable to meet a given NAAQS, including such emissions reductions that may be obtained through implementation of RACT. Under the provisions of Subpart 2 of part D of title I of the CAA, states with ozone nonattainment areas classified Moderate and higher must adopt RACT rules for all volatile organic compounds (VOC) sources covered by existing or new Control Technique Guidelines (CTGs)¹², and for all other major stationary sources of VOC and nitrogen oxide (NO_x).¹³ This same requirement applies to states with affected sources in the OTR.¹⁴ The RACT SIP requirements for states with nonattainment areas and states in the OTR are codified for the 2008 ozone NAAQS in 40 CFR 51.1112 and 51.1116(b), respectively, and require that

¹² CTGs provide the EPA's recommendations on how to control emissions of VOC from a specific type of product or process (source category) in an ozone nonattainment area. Each CTG includes emissions limitations based on RACT. RACT emissions limitations are the lowest emissions limitations that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Air agencies responsible for ozone nonattainment areas or areas in the OTR must evaluate the recommendations provided in the CTG and determine if it is necessary to modify their existing regulations or create new regulations to meet the CAA's RACT requirements. *See* website: https://www3.epa.gov/airtoxics/ctg_act.html.

¹³ To clarify, this notice does not make any findings with respect to SIP revisions that were required upon EPA's issuance of specific CTGs in 2006, 2007, 2008 or other years. In issuing those CTGs, the EPA established a separate set of SIP revision deadlines (as required by CAA section 182(b)(2)), and these deadlines are not associated with or triggered by the issuance of revised ozone NAAQS in 1997 or 2008. The findings in this notice pertain only to those SIP revisions triggered by the promulgation of a revised ozone NAAQS in 2008.

¹⁴ CAA section 184(b).

RACT SIP revisions be submitted no later than 24 months after the effective date of area designations for the 2008 standards (i.e., July 20, 2014).

Nonattainment New Source Review

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.¹⁵ The specific NNSR requirements for the 2008 ozone NAAQS are located in 40 CFR 51.160-165. The 2008 Ozone SIP Requirements Rule explained that, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2008 standards (i.e., July 20, 2015).¹⁶

Basic Vehicle Inspection and Maintenance

Consistent with the applicable provisions under CAA section 182(b)(4), ozone nonattainment areas with urbanized populations of 200,000 or more based upon the 1990 United States Census that are classified as Moderate are subject to requirements to implement a basic vehicle inspection and maintenance (I/M) program, for which a new submittal or plan revision is due at the same time as the attainment demonstration, which was 3 years after the effective date of designation for a Moderate area (i.e., July 20, 2015).¹⁷

¹⁵ CAA sections 172(c)(5), 173 and 182.

¹⁶ With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's Prevention of Significant Deterioration program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

¹⁷ 40 CFR 51.372(b)(2).

Transportation Control Measures to Offset Growth in Emissions from Growth in Vehicle Miles Traveled

Consistent with CAA section 182(d)(1)(A), Severe and higher ozone nonattainment areas must submit an analysis to determine if emissions have increased due to growth in vehicle miles traveled (VMT) or vehicle trips. If the VMT analysis shows that a growth in emissions has occurred, the subject area must develop and submit a new plan or a plan revision with specific enforceable transportation control measures (TCMs) to offset that growth in emissions. For such areas, a new submittal or plan revision was due 2 years after the effective date of area designation (i.e., July 20, 2014).

Clean Fuels for Boilers

For ozone nonattainment areas classified as Extreme, section 182(e)(3) of the CAA outlines requirements for new, modified, and existing electric utility, industrial, and commercial boilers that emit more than 25 tons per year of NO_x. Such facilities must use a low polluting fuel as its primary fuel source (e.g., natural gas, methane, ethanol) or use advanced control technology for NO_x emissions reductions. For such areas, a new submittal or plan revision was due 3 years after the effective date of area designation (i.e., July 20, 2015).

III. Consequences of a Finding of Failure to Submit

For plan requirements under subpart D, title I of the CAA, such as those for ozone nonattainment areas and areas in the OTR, 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 eventual imposition of mandatory sanctions for

the affected area. Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years from the finding of failure to submit a complete SIP, if the affected state has not submitted, and the EPA has not approved, the required SIP submittal.

If the EPA has not affirmatively determined that a state has submitted a complete SIP addressing the deficiency that is the basis for the finding 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 submitted a complete SIP addressing the deficiency that is the basis for the finding 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. If the state does not make the required SIP submittal and the EPA does not take final action to approve the submittal within 2 years of the effective date of these findings, the EPA is required to promulgate a FIP, pursuant to CAA section 179(a) and 40 CFR 52.31 for the affected nonattainment area.

IV. Findings of Failure to Submit for States that Failed to Make a Nonattainment Area and/or Ozone Transport Region SIP submittal

Based on a review of SIP submittals received and deemed complete as of the date of this action, the EPA is finding that the states and areas listed in the tables below have failed to submit specific SIP element(s) for the 2008 ozone NAAQS required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.

Table 1. Findings of Failure to Submit Certain Required SIP Elements for 2008 Ozone NAAQS Nonattainment Areas

Region	State	Area Name	Required SIP Element
1	CT	Greater Connecticut	Nonattainment NSR rules - Marginal
1	CT	New York-N. New Jersey-Long Island	Nonattainment NSR rules - Marginal
1	MA	Dukes County	Nonattainment NSR rules - Marginal
2	NJ	New York-N. New Jersey-Long Island	Nonattainment NSR rules - Marginal
2	NJ	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules - Marginal
3	DC	Washington	Nonattainment NSR rules - Marginal
3	DE	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules - Marginal
3	DE	Seaford	Nonattainment NSR rules - Marginal
3	MD	Baltimore	I/M Basic
3	MD	Baltimore	Nonattainment NSR rules - Moderate
3	MD	Baltimore	NO _x RACT for Major Sources
3	MD	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules - Marginal
3	MD	Washington	Nonattainment NSR rules - Marginal
3	PA	Allentown-Bethlehem-Easton	Nonattainment NSR rules - Marginal
3	PA	Lancaster	Nonattainment NSR rules - Marginal
3	PA	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules - Marginal
3	PA	Pittsburgh-Beaver Valley	Nonattainment NSR rules - Marginal
3	PA	Reading	Nonattainment NSR rules - Marginal
3	VA	Washington	Nonattainment NSR rules - Marginal
5	IL	Chicago-Naperville	Nonattainment NSR rules - Marginal
5	IL	St. Louis-St. Charles-Farmington	Nonattainment NSR rules - Marginal
5	IN	Chicago-Naperville	Nonattainment NSR rules - Marginal
5	IN	Cincinnati	Nonattainment NSR rules - Marginal
5	WI	Chicago-Naperville	Nonattainment NSR rules - Marginal
5	WI	Sheboygan County	Nonattainment NSR rules - Marginal
9	CA	Calaveras County	Nonattainment NSR rules - Marginal
9	CA	Kern County (Eastern Kern)	Nonattainment NSR rules - Marginal

9	CA	Los Angeles-San Bernardino Counties (Antelope Valley & Mojave Desert air districts)	Nonattainment NSR rules - Severe 15
9	CA	Los Angeles-San Bernardino Counties (Antelope Valley & Mojave Desert air districts)	VMT - TCMs to Offset Growth
9	CA	Los Angeles-South Coast Air Basin	Clean Fuels for Boilers
9	CA	Los Angeles-South Coast Air Basin	Nonattainment NSR rules - Extreme
9	CA	Los Angeles-South Coast Air Basin	VMT - TCMs to Offset Growth
9	CA	Mariposa County	Nonattainment NSR rules - Marginal
9	CA	Riverside County (Coachella Valley)	Nonattainment NSR rules - Severe 15
9	CA	Riverside County (Coachella Valley)	VMT - TCMs to Offset Growth
9	CA	Sacramento Metro (Sacramento)	Non-CTG VOC RACT for Major Sources
9	CA	Sacramento Metro (Sacramento)	NO _x RACT for Major Sources
9	CA	Sacramento Metro (Sacramento)	CTG VOC RACT (for all 44 CTGs*)
9	CA	Sacramento Metro (Yolo Solano)	Nonattainment NSR rules - Severe 15
9	CA	Sacramento Metro (Yolo Solano)	Non-CTG VOC RACT for Major Sources
9	CA	Sacramento Metro (Yolo Solano)	NO _x RACT for Major Sources
9	CA	Sacramento Metro (Yolo Solano)	CTG VOC RACT (for all 44 CTGs*)
9	CA	Sacramento Metro	VMT - TCMs to Offset Growth
9	CA	San Joaquin Valley	Nonattainment NSR rules - Extreme
9	CA	Ventura County	Nonattainment NSR rules - Serious

* A listing in the chart for “all 44 CTGs” or particular CTG does not mean that the state or area has failed to meet a plan submission requirement triggered by the issuance of any particular CTG. The findings in this notice pertain only to those SIP revisions triggered by the promulgation of a revised ozone NAAQS in 2008. In other words, consistent with CAA sections 182(b)(2) and 184(b)(1)(B), and 40 CFR 51.1112 and 51.1116, inclusion in this table means that the state or area listed has failed to submit to the EPA a RACT submittal per the 2008 ozone

NAAQS to address the sources covered by a CTG. The 44 VOC RACT CTGs that are relevant for purposes of the 2008 ozone NAAQS are for the following source categories: Aerospace; Auto and Light-Duty Truck Assembly Coatings (2008); Bulk Gasoline Plants; Equipment Leaks from Natural Gas/Gasoline Processing Plants; Factory Surface Coating of Flat Wood Paneling; Fiberglass Boat Manufacturing Materials (2008); Flat Wood Paneling Coatings (2006); Flexible Packaging Printing Materials (2006); Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment; Graphic Arts - Rotogravure and Flexography; Industrial Cleaning Solvents (2006); Large Appliance Coatings (2007); Large Petroleum Dry Cleaners; Leaks from Gasoline Tank Trucks and Vapor Collection Systems; Leaks from Petroleum Refinery Equipment; Lithographic Printing Materials and Letterpress Printing Materials (2006); Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; Manufacture of Pneumatic Rubber Tires; Manufacture of Synthesized Pharmaceutical Products; Metal Furniture Coatings (2007); Miscellaneous Industrial Adhesives (2008); Miscellaneous Metal Products Coatings (2008); Paper, Film, and Foil Coatings (2007); Petroleum Liquid Storage in External Floating Roof Tanks; Plastic Parts Coatings (2008); Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; Shipbuilding/repair; SOCOMI Air Oxidation Processes; SOCOMI Distillation and Reactor Processes; Solvent Metal Cleaning; Stage I Vapor Control Systems - Gasoline Service Stations; Storage of Petroleum Liquids in Fixed Roof Tanks; Surface Coating for Insulation of Magnet Wire; Surface Coating of Automobiles and Light-Duty Trucks; Surface Coating of Cans; Coating of Coils; Surface Coating of Fabrics; Surface Coating of Large Appliances; Surface Coating of Metal Furniture; Surface Coating of Miscellaneous Metal Parts and Products; Coating of Paper; Tank Truck Gasoline Loading Terminals; Use of Cutback Asphalt; Wood Furniture.

Table 2. Findings of Failure to Submit Certain Required SIP Elements for States in the Ozone Transport Region

EPA Region	State	Required SIP Element
1	MA	Non-CTG VOC RACT for Major Sources
1	MA	NO _x RACT for Major Sources
1	MA	CTG VOC RACT (for all 44 CTGs*)
1	ME	Non-CTG VOC RACT for Major Sources
1	ME	CTG VOC RACT (for all 44 CTGs*)
1	NH	Non-CTG VOC RACT for Major Sources
1	NH	NO _x RACT for Major Sources
1	NH	CTG VOC RACT (for all 44 CTGs*)

1	RI	Non-CTG VOC RACT for Major Sources
1	RI	NO _x RACT for Major Sources
1	RI	CTG VOC RACT (for all 44 CTGs*)
1	VT	Non-CTG VOC RACT for Major Sources
1	VT	NO _x RACT for Major Sources
1	VT	CTG VOC RACT (for all 44 CTGs*)
2	NJ	CTG VOC RACT Fiberglass Boat Manufacturing Materials (2008)
2	NJ	CTG VOC RACT Miscellaneous Metal Products Coatings (2008)
2	NJ	CTG VOC RACT Paper, Film, and Foil Coatings (2007)
2	NJ	CTG VOC RACT Plastic Parts Coatings (2008)
2	NJ	CTG VOC RACT Industrial Cleaning Solvents (2006)
3	DC	NO _x RACT for Major Sources
3	DC	CTG VOC RACT (for all 44 CTGs*)
3	DC	Non-CTG VOC RACT for Major Sources
3	MD	NO _x RACT for Major Sources
3	PA	CTG VOC RACT (for all 44 CTGs*)
3	VA	Non-CTG VOC RACT for Major Sources
3	VA	NO _x RACT for Major Sources
3	VA	CTG VOC RACT (for all 44 CTGs*)

*See the explanation after Table 1.

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 directly affect the level of protection provided to human health or environment under the ozone NAAQS. The purpose of this rule is to make findings that states named have failed to provide the identified SIP submissions to the EPA that are required per the CAA for purposes of implementing the 2008 ozone NAAQS. As such, this action does not directly affect the level of protection provided for human health or the environment. Moreover, it is intended that the actions and deadlines resulting from this notice will in fact lead to greater protection for U.S. 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 2008 ozone NAAQS.

VI. Statutory and Executive Order Reviews

A. Executive Order 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. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. 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 sections 172, 182, and 184 which address the statutory requirements that apply to areas designated as nonattainment for the ozone NAAQS and to states within the Ozone Transport Region, respectively.

C. 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 submitted the necessary SIP revisions.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under section 184 of the CAA for the 2008 ozone 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.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern 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

several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under Section 184 for the 2008 ozone NAAQS and does not directly or disproportionately affect children.

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under section 184 of the CAA for the 2008 ozone NAAQS, this action does not directly affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section V of this preamble titled “Environmental Justice Considerations.”

K. Congressional Review Act (CRA)

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

L. Judicial Review

Section 307(b)(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 United States Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required SIP revisions is "nationally applicable" within the meaning of section 307(b)(1). This final agency action affects 15 states with nonattainment areas and/or in the OTR, located in five of the 10 EPA Regional offices, and in 6 different federal circuits.

In addition, the EPA has determined that this rule has nationwide scope or effect because it 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 6 judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the

Page 18 of 18 - Findings of Failure to Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

Administrator to find the rule to be of "nationwide scope or effect" and, thus, to indicate that venue for challenges lies in the District of Columbia Circuit. Accordingly, the EPA is determining that this rule is of nationwide scope or effect.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

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

Dated:

Gina McCarthy,
Administrator.