

The EPA Administrator, Michael S. Regan, signed the following notice on 8/25/2022, 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 govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2022-0320. 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-2022-0320; FRL-9731-01-OAR]

Finding of Failure to Submit Regional Haze State Implementation Plans for the Second Planning Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that 15 states have failed to submit State Implementation Plans (SIPs) to satisfy the visibility protection requirements of the Clean Air Act (CAA), as described in implementing regulations, for the regional haze second planning period. These findings of failure to submit establish a 2-year deadline for the EPA to promulgate Federal Implementation Plans (FIPs) to address these requirements for a given state unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

DATES: Effective date of this action is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Mr. Joseph Stein, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541-0195; email address: stein.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this 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, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How 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–2022–0320. All documents in the docket are listed and publicly available at <http://www.regulations.gov>. Publicly available docket materials are also available in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continue to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further

information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

C. How is the preamble organized?

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The following chart shows the states that failed to make a complete second planning period regional haze SIP submittal as required by EPA's Regional Haze Rule, 40 CFR 51.308, promulgated pursuant to the visibility protection provisions of the CAA found at CAA sections

169A and 169B. for the regional haze second planning period. For questions related to specific states mentioned in this document, please contact the appropriate EPA Regional office:

| Regional Offices | States |
|---|--------------------------------|
| EPA Region 1: John Rogan, Chief, Air Quality Branch, EPA Region I, 5 Post Office Square-Suite 100, Boston, Massachusetts 02109-3912. | Maine, Rhode Island, Vermont |
| EPA Region 3: Mike Gordon, Chief, Planning and Implementation Branch, EPA Region III, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103. | Pennsylvania, Virginia |
| EPA Region 4: Lynorae Benjamin, Chief, Air and Radiation Division/Air Planning and Implementation Branch, EPA Region IV, 61 Forsyth Street (AIR), Atlanta, Georgia 30303. | Alabama, Kentucky, Mississippi |
| EPA Region 5: Doug Aburano, Manager, Air & Radiation Division, EPA Region V, 77 W. Jackson Boulevard (AR-18J), Chicago, Illinois 60604-3511. | Illinois, Minnesota |
| EPA Region 6: Michael Feldman, Chief, Air and Radiation Division/Regional Haze and SO2 Section, EPA Region VI, 1201 Elm Street, Suite 500, Dallas, Texas 75270. | Louisiana, New Mexico |
| EPA Region 7: Andy Hawkins, Air and Radiation Division, Air Quality Programs Branch, EPA Region VII, 11201 Renner Boulevard, Lenexa, Kansas 66219. | Iowa, Missouri, Nebraska |

II. Background and Overview

A. Regional Haze SIPs

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation’s mandatory Class I Federal areas, which include certain national parks and wilderness

areas.¹ CAA 169A. The CAA establishes as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas (Class I areas) which impairment results from manmade air pollution. CAA 169A(a)(1). More specifically, CAA section 169A(b)(2)(B) requires SIPs to include long-term strategies for making reasonable progress toward meeting Congress' national goal.

In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA 169B. The EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308, on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I areas. The RHR requires iterative SIP revisions that address the reasonable progress requirements for each 10-15 year planning period. Regional haze SIPs for the first planning period were due from states in December 2007. Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the Best Available Retrofit Technology (BART). CAA 169(b)(2)(A); 40 CFR 51.308(d), (e).

In 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify states' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the

¹ Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

second and subsequent implementation periods focused on the requirement that states' SIPs contain provisions for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Additionally, the 2017 RHR Revisions adjusted the deadline for states to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021. 82 FR 3115.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). Completeness criteria are set forth at 40 CFR part 51, appendix V. The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a "finding of failure to submit." This finding starts a 2-year "clock" for promulgation of a FIP by the EPA, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal from the state to meet the requirements of the RHR and CAA sections 169A and 169B. Even where the EPA has promulgated a FIP, the EPA will take action to withdraw that FIP if a state submits and the EPA approves a SIP satisfying the relevant requirements. These findings of failure to submit do not start mandatory sanctions clocks pursuant to CAA section 179 because these findings of failure to submit do not pertain to part D plans for nonattainment areas.

Some states have submitted complete second planning period regional haze SIPs as required under the CAA and the RHR, but at present 15 states have not yet submitted complete SIPs to the EPA to satisfy these requirements of the CAA and RHR. The EPA is by this action making a finding of failure to submit for those states.

B. Background on Second Planning Period Regional Haze SIPs and Related Matters

As mentioned previously, the 2017 RHR Revisions set the deadline for states to submit their second planning period regional haze SIPs by July 31, 2021. 40 CFR 51.308(f). In total, 15 states have failed to submit complete SIPs while 35 states and the District of Columbia have submitted complete SIPs addressing CAA sections 169A and 169B for the regional haze second planning period. The EPA has included in the docket for this action its correspondence with states regarding the completeness of their SIP submissions. SIPs may be considered complete by either of two methods. First, the EPA may make a determination that a SIP is complete under the “completeness criteria” set out at 40 CFR part 51, appendix V. *See* CAA section 110(k)(1). Second, a SIP may be deemed complete by operation of law if the EPA has failed to make such a determination by 6 months after receipt of the SIP submission. *See* CAA section 110(k)(1)(B). The 15 states that failed to make a complete SIP submittal addressing regional haze for the second planning period include: Alabama, Illinois, Iowa, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, Vermont, and Virginia. In all other cases, the EPA has determined that the SIP submittals are complete or they have been deemed complete by operation of law. The EPA is issuing national findings of failure to submit regional haze SIPs addressing the requirements of the RHR and CAA sections 169A and 169B for the regional haze second planning period for all states that EPA has not found to have made complete submissions as of the date of this document.

III. Findings of Failure To Submit for States That Failed To Make a Regional Haze SIP Submission for the Second Planning Period

The EPA is making findings of failure to submit for 15 states. The EPA finds the following states have not submitted complete regional haze SIPs that meet the requirements of

the RHR and CAA sections 169A and 169B for the regional haze second planning period: Alabama, Illinois, Iowa, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, Vermont, and Virginia. Notwithstanding these findings, and the associated obligation of the EPA to promulgate FIPs for these states within 2 years of these findings, the EPA intends to continue to work with states subject to these findings to assist them in developing approvable SIP submittals in a timely manner.

IV. Environmental Justice Considerations

The purpose of this action is to make findings that the named states failed to provide the identified SIP submissions to the EPA that are required under the RHR and the CAA. As such, this action, in and of itself, does not adversely affect the level of protection provided for human health or the environment. Moreover, it is intended that the actions and deadlines resulting from this document will promote 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 consistent with visibility protection requirements.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This finding relates to the requirement in the CAA for states to submit SIPs under section 169A and 169B of the CAA for the regional haze second planning period.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553 or any other statute. This action is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b). The Agency certifies that this action 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 action is a finding that the named states have not made the necessary SIP submission for regional haze to meet the requirements under sections 169A and 169B of the CAA.

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 (65 FR 67249, November 9, 2000). This action responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of the RHR and CAA. 82 FR 3078 (Jan. 10, 2017). No tribe is identified in this action as failing to submit a required SIP. Therefore, 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 certain states have failed to submit a complete SIP that satisfies regional haze requirements under sections 169A and 169B of the CAA for the second planning period 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 (NTTAA)

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 certain states have failed to submit a complete SIP that satisfies the regional haze requirements under sections 169A and 169B of the CAA for the regional haze second planning period, this action does not adversely affect the level of protection provided to human health or the environment.

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 actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) such action is locally or regionally applicable, but “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.” This final action is nationally applicable. To the extent a court finds this final action to be locally or regionally applicable, the EPA finds that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). This final action consists of findings of failure to submit required regional haze SIPs for the second planning period from 15 states located in six of the ten EPA Regional offices. This final action is also based on a common core of factual findings concerning the receipt and completeness of the relevant SIP submittals. For these reasons, this final action is nationally applicable or,

alternatively, to the extent a court finds this action to be locally or regionally applicable, the Administrator has determined that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action. Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the *Federal Register*.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.