

The EPA Principal Deputy Assistant Administrator for the Office of Air and Radiation, Anne L. Austin, signed the following notice on 10/8/2020, 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-2020-0377. 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-2020-0377; FRL-10015-79-OAR]**

#### **Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking a final action to find that four states and territories (Indiana, Louisiana, Guam, and Puerto Rico) failed to submit State Implementation Plans (SIPs) to satisfy certain nonattainment area planning requirements of the Clean Air Act (CAA) for the 2010 1-Hour Primary Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The purpose of the development and implementation of nonattainment area SIPs is to provide for attainment of the NAAQS as expeditiously as practicable following the designation of an area as nonattainment. This action triggers certain CAA deadlines for the EPA to impose sanctions if a state or territory does not submit a complete SIP addressing the outstanding requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) if the EPA does not approve a state's or territory's SIP.

**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 Ms. Sydney Lawrence, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C539-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; by telephone (919) 541-4768; or by email at *lawrence.sydney@epa.gov*.

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### 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 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 findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states and territories have made no submissions, or incomplete submissions, to meet the requirement. 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-2020-0377. All documents in the docket are listed on <http://www.regulations.gov> Web site. 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>. Out of an abundance of caution for members of the public and our staff, EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center

staff will continue to provide remote customer service via email, phone, and webform. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

*C. Where do I go if I have specific state or territory questions?*

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

|   |             |
|---|-------------|
| EPA Region 2: Mr. Kirk Wieber, Air Programs Branch, EPA Region II, 290 Broadway, 25 <sup>th</sup> Floor, New York 10007; <a href="mailto:wieber.kirk@epa.gov">wieber.kirk@epa.gov</a> .   | Puerto Rico |
| EPA Region 5: Mr. Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, Illinois 60604; <a href="mailto:aburano.douglas@epa.gov">aburano.douglas@epa.gov</a> . | Indiana     |
| EPA Region 6: Mr. Michael Feldman, Chief, SO <sub>2</sub> and Regional Haze Section, EPA Region 6, 1201 Elm Street, Suite 500. Dallas, Texas 75270; <a href="mailto:feldman.michael@epa.gov">feldman.michael@epa.gov</a> .                        | Louisiana   |
| EPA Region 9: Ms. Anita Lee, Manager, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105; <a href="mailto:lee.anita@epa.gov">lee.anita@epa.gov</a> .   | Guam        |

## II. Background

In June 2010, the EPA promulgated a new 1-hour primary SO<sub>2</sub> NAAQS of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99<sup>th</sup> percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. *See* 40 CFR 50.17(a and (b)). On January 9, 2018, the EPA, as part of the third round of area designations for the 2010 SO<sub>2</sub> NAAQS, designated five areas of the country as nonattainment for the 1-hour primary 2010 SO<sub>2</sub> NAAQS.<sup>1</sup> *See* 83 FR 1098, codified at 40 CFR part 81, subpart C. These area designations had an effective date of April 9, 2018.

Areas designated nonattainment for the SO<sub>2</sub> NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and to the SO<sub>2</sub>-specific planning requirements of subpart 5 of part D of Title I of the CAA (sections 191 and 192). All components of the SO<sub>2</sub> part D nonattainment area SIP, including the emissions inventory, attainment demonstration, reasonably available control measures (RACM) and reasonably available control technology (RACT), enforceable emissions limitations and control measures,

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<sup>1</sup> The EPA completed its first round of initial area designations for the 2010 1-hour primary SO<sub>2</sub> NAAQS on August 5, 2013, with an effective date of October 4, 2013. Under a court order issued on March 2, 2015, the EPA has completed two out of three additional rounds of designations, required to be completed by no later than December 31, 2020. The findings in this document apply only to those areas that were designated as a part of the third round of designations for the 2010 SO<sub>2</sub> NAAQS on January 9, 2018, with an effective date of April 9, 2018, and where, as of signature of this action, the affected states failed to submit required complete implementation plans to address attainment of the 1-hr primary SO<sub>2</sub> NAAQS.

Reasonable Further Progress (RFP) plan, nonattainment New Source Review (NNSR) program, and contingency measures, are due to the EPA within 18 months of the effective date of designation of an area under CAA section 191. Thus, the nonattainment area SIPs for areas designated effective April 9, 2018, were due on October 9, 2019. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, or April 9, 2023.

### **III. Consequences of Findings of Failure to Submit**

If the EPA finds that a state or territory has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, after a period of time, including the 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 after the finding of failure to submit if the affected state or territory has not submitted, and the EPA has not approved, the required SIP submittal.

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

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

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

As of the date of signature of this action, the four states and territories listed in Table 1 failed to make complete SIP submittals required under part D of Title I of the CAA by October 9, 2019, for the five areas designated nonattainment effective April 9, 2018. The specific components of the SO<sub>2</sub> part D nonattainment area SIP that the four states and territories failed to submit include: an accurate inventory of current emissions for all sources of SO<sub>2</sub> in the nonattainment area, an attainment demonstration, reasonably available control measures (RACM) and reasonably available control technology (RACT), enforceable emissions limitations and control measures, reasonable further progress (RFP) plan, nonattainment new source review (NNSR) program, and contingency measures. Therefore, the EPA is issuing findings of failure to submit SO<sub>2</sub> nonattainment area SIPs for four states and territories responsible for these areas.

#### **Table 1: States or Territories and SO<sub>2</sub> Nonattainment Areas Affected by These Findings of Failure to Submit**

| <b>EPA Regional Office</b> | <b>State or Territory</b> | <b>Nonattainment Area</b>   |
|----------------------------|---------------------------|---|
| Region 2                   | Puerto Rico               | Guayama-Salinas:<br>-Salinas Municipality (p)   |
| Region 2                   | Puerto Rico               | San Juan:<br>- Cataño Municipality<br>- Toa Baja Municipality (p)<br>- San Juan Municipality (p)<br>- Guaynabo Municipality (p)<br>- Bayamón Municipality (p) |
| Region 5                   | Indiana                   | Huntington:<br>-Huntington County (p)   |
| Region 6                   | Louisiana                 | Evangeline Parish:<br>-Evangeline Parish (p)  |
| Region 9                   | Guam                      | Piti-Cabras:<br>-Piti-Cabras (p)  |

Note: Partial counties are indicated in the table as (p).

## **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 the environment under the SO<sub>2</sub> NAAQS. The purpose of this rule is to make findings that the affected states and territories named failed to submit the required SIPs to provide for timely attainment of the 1-hour primary SO<sub>2</sub> NAAQS. In finding that certain states and territories failed to submit a complete SIP that satisfies the nonattainment area planning requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO<sub>2</sub> NAAQS, 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 and territories meet their obligation to develop and submit SIPs to ensure that areas make progress toward attaining the 1-hour primary SO<sub>2</sub> 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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### *C. 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 and territories to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA

(sections 191 and 192) which address the statutory requirements that apply to areas designated as nonattainment for the SO<sub>2</sub> NAAQS.

*D. Regulatory Flexibility Act (RFA)*

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The rule is a finding that the named states and territories have not made the necessary SIP submission for nonattainment areas to meet the requirements of part D, title I of the CAA.

*E. Unfunded Mandates Reform Act of 1995 (UMRA)*

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

*F. Executive Order 13132: Federalism*

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

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

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that the named states and territories failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO<sub>2</sub> NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 5 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that the named states and territories failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA for the 1-hour primary SO<sub>2</sub> NAAQS and does not directly or disproportionately affect children.

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

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

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority 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 the named states and territories have failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA for the 1-hour primary SO<sub>2</sub> NAAQS, this action does not directly affect the level of protection provided to human health or the environment.

*L. Congressional Review Act (CRA)*

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

*M. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final 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 if (i) the agency action consists of "nationally applicable regulations promulgated, or final actions 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 SIPs from four states and territories for five named nonattainment areas for the 2010 primary 1-hour SO<sub>2</sub> NAAQS, located in four of the 10 EPA Regions, and in four different federal judicial circuits. 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.

## **List of Subjects in 40 CFR Part 52**

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

Dated: October 8, 2020

Anne L. Austin,  
Principal Deputy Assistant Administrator.