a significant economic impact on a substantial number of small entities as the zone will only be in effect for the time required to complete the vessel safety inspections and repairs on the vessel HIGHLAND FAITH while it is in the Port of New York/New Jersey.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–253 to read as follows:

§ 165.T01–253 Safety Zone; Potential Explosive Atmosphere, Vessel Highland Faith, Port of New York/New Jersey.

(a) *Location.* The following area is a safety zone: All waters of the Port of New York/New Jersey within a 2000-foot radius of the vessel HIGHLAND FAITH.

(b) *Effective period.* This section is effective from 10:30 a.m. (e.s.t.) on December 12, 2000, until 7 a.m. (e.s.t.) on January 1, 2001. The size and duration of this safety zone may be expanded or contracted due to the results of the vessel safety inspection.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 12, 2000.

R.E. Bennis,

Rear Admiral, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–32827 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6922–5]

Final Rule Making Findings of Failure to Submit Required State Implementation Plans for the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action making findings, under the Clean Air Act (CAA), that Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia failed to make complete State implementation plan (SIP) submittals required under the CAA. Under the CAA and EPA's nitrogen oxides (NO_X) SIP call regulations, these States were required to submit SIP measures providing for reductions in the emissions of NO_X, an ozone precursor. The EPA is continuing to work with these States to assist them in adopting State plans that meet the requirements of the NO_X SIP Call and is hopeful that States will submit fully approvable plans. The EPA is taking this step today to continue the progress being made towards reducing NO_X emissions in the eastern portion of the country because of the significant public health benefits of those reductions. This action triggers the 18-month time clock for mandatory application of sanctions in these States under the CAA. This action also triggers the requirement that EPA promulgate a Federal implementation plan (FIP) within 2 years of making the finding.

EFFECTIVE DATE: January 25, 2001.

ADDRESSES: A docket containing information relating to this rulemaking (Docket No. A–98–12) is available for public inspection at the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A

reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711; telephone (919) 541–5665. Legal questions should be addressed to Howard J. Hoffman, Office of General Counsel, 1200 Pennsylvania Avenue, NW, MC–2344A, Washington, DC 20460, telephone (202) 564–5582.

SUPPLEMENTARY INFORMATION: You can find a copy of today's action at http://www.epa.gov/ttn/rto.

The contents of this preamble are listed in the following outline:

I. Background

For almost 30 years, Congress has focused major efforts on curbing ground-level (tropospheric) ozone. In 1990, Congress amended the CAA to better address, among other things, continued nonattainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) and transport of air pollutants across State boundaries.

The 1990 Amendments reflect general awareness by Congress that ozone is a regional, as well as local problem. Ozone and NO_X, one of its precursors, may be transported long distances across State lines to combine with ozone and precursors downwind, thereby worsening the ozone problems downwind. This transport phenomenon is a major reason for the persistence of the ozone problem, notwithstanding the imposition of numerous emission controls, both Federal and State, across the country.

Section 110(a)(2)(D) of the CAA is one of the most important tools for addressing the problem of transport. This section states that States must adopt SIPs that contain provisions prohibiting sources within the State from contributing significantly to nonattainment problems in, or interfering with maintenance by, downwind States. Section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement. It further authorizes EPA to require a State with an inadequate SIP to submit, within a specified period, a SIP revision to correct the inadequacy.

By notice dated October 27, 1998, EPA issued its final rule under sections 110(a)(2)(D) and 110(k)(5) NO_X SIP call rules finding that emissions of NO_X from 22 States and the District of Columbia significantly contribute to downwind areas' nonattainment of the 1-hour ozone NAAQS (63 FR 57356). In the NO_X SIP call rule, as modified by the March 2, 2000 technical amendment (65 FR 11222), EPA also established emissions budgets for NO_X that each of the identified States must meet through enforceable SIP measures. The SIP call rule addressed both the 1-hour ozone NAAQS in existence since 1979 and a revised 8-hour NAAQS EPA promulgated in 1997. Various industries and States challenged the final NO_X SIP call rule by filing petitions for review in the U.S. Court of Appeals for the District of Columbia (D.C. Circuit). [1]

The September 24, 1998 NO_X SIP called required States to submit SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP call filed a motion requesting the Court to stay the submission schedule until April 27, 2000. In response, in May 1999, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* versus *EPA,* No. 98–1497 (D.C. Cir., May 25, 1999) (order granting stay in part).

In a separate legal challenge to EPA's revised NAAQS for ozone, the D.C. Circuit remanded the 8-hour ozone NAAQS. *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d 1027 upon rehearing 195 F.3d 4 (D.C. Cir. 1999). The Supreme Court is considering this case. Prior to presenting argument in the SIP call case, EPA informed the court that it would stay the 8-hour basis of the SIP call and requested that the court stay its consideration of the 8-hour basis of the SIP call due to the uncertainties created by the litigation. The EPA indefinitely stayed the NO_X SIP call as it applies for the purposes of the 8-hour NAAQS (65 FR 56245, September 18, 2000).

On March 3, 2000, the court of appeals issued an opinion, largely upholding the 1-hour basis for the NO_X SIP call. However, the court vacated and remanded the rule as it applied to three States—Wisconsin, Georgia and Missouri—on the basis that the record for the 1-hour standard did not support EPA's determinations with respect to these three States. The court also remanded, but did not vacate, two other minor issues—the definition of an electric generating unit, as applied to cogeneration units, and the control level assumed for internal combustion engines.

On April 11, 2000, in light of the court's favorable decision, EPA filed a motion with the court to lift the stay of the SIP submission date. The EPA requested that the court lift the stay as of April 27, 2000. The EPA recognized, however, that at the time the stay was issued, States had approximately 4 months (128 days) remaining to submit SIPs. Therefore, EPA's motion to lift the stay indicated that EPA would allow States until September 1, 2000 to submit SIPs addressing the SIP call.[2] On June 22, 2000, the Court granted EPA's request in part. The Court ordered that EPA allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs.[3] Therefore, SIPs were due October 30, 2000.[4] Because the court vacated the rule as to Wisconsin, Georgia, and Missouri, these States were not required to submit SIPs by that date.

II. What Action is EPA Taking Today?

Today, EPA is making findings of failure to officially submit complete submissions to their SIPs, including adopted rules, in response to the SIP call. The States that are receiving these

[1] In a separate legal challenge to EPA's revised NAAQS for ozone and particulate matter, the D.C. Circuit remanded the 8-hour ozone NAAQS. *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d 1027 *on rehearing* 195 F.3d 4 (D.C. Cir. 1999). The Supreme Court is considering this case. Because EPA believes we should not continue implementation efforts under section 110 due to the uncertainty created by the DC Circuit's decision, and the continued litigation, EPA indefinitely stayed the NO_X SIP call as it applies for the purposes of the 8-hour NAAQS (65 FR 56245, September 18, 2000), including the SIP submission obligation. Therefore, EPA is making no findings with respect to the 8-hour basis for the NO_X SIP call.

[2] In the April 11 letters to the States, EPA recognized that Wisconsin, Georgia and Missouri were not required to submit SIPs because the court vacated (and remanded to EPA for further consideration) the NO_X SIP call rule as it applied to those States. Recognizing that the court remanded (but did not vacate) as to two limited issues, EPA also provided that the States that remained subject to the SIP call could choose to submit SIPs addressing only the portion of the NO_X budgets that were not affected by the courts remand of two issues: the definition of an electric generating unit and the level of control for internal combustion engines.

[3] The EPA determined that SIPs were due on October 30, 2000, which is the first business day following the expiration of the 128-day period.

[4] The EPA's stay of the 8-hour basis stayed all aspects of the rule for purposes of the 8-hour standard, including their obligation to submit a SIP. Thus, the findings EPA is making are not for purposes of the 8-hour basis of the SIP call.

findings are Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia. The EPA intends to continue working with these States so that they can submit approvable adopted rules as soon as possible. EPA is issuing findings today to help ensure continued progress in reducing NO_X emissions in the eastern portion of the country.

These findings start an 18-month sanctions clock; if the State fails to make the required submittal which EPA determines is complete within that period, the emissions offset sanction will apply in accordance with 40 CFR 51.121(n) and 52.31. The offset sanction requires new or modified sources subject to a CAA section 173 new source review program for ozone to obtain reductions in existing emissions in a 2:1 ratio to offset their new emissions.[5] If 6 months after the sanction is imposed, the State still has not made a complete submittal that EPA has determined is complete, limitations on the approval of Federal highway funds will apply in accordance with 51.212(a) and 52.31. Conversely, the 18-month clock, or additional 6-month clock, stops and the sanctions will not take effect (or will be lifted) when EPA finds that the State has made a complete SIP submittal under the SIP call.

In addition, CAA section 110(c) provides that EPA can promulgate a FIP immediately after making the findings, as late as 2 years after making the findings, or any time in between. Public health in downwind States depends on reductions being made upwind, and it is important that sources in States that have met their obligations under the NO_X SIP call are not at a competitive disadvantage to sources in other States subject to the NO_X SIP call. The EPA will take these needs into consideration as it reviews taking any action regarding FIPs.

Our goal is to have approvable SIPs that meet the requirements of the NO_X SIP call. We remain ready to work with the States to develop fully approvable SIPs, which would eliminate the need for EPA to promulgate a FIP or replace any FIP that EPA adopts. The process of developing the SIP call rulemaking offered opportunities for collaboration, and such opportunities remain as the States continue to develop their SIPs.

[5] In general, the areas subject to a section 173 new source review program are those areas with areas designated nonattainment for the 1-hour ozone standard. However, all areas in the Northeast Ozone Transport Region, regardless of designation, are subject to this requirement.

Recently, EPA sent letters to the Governors of the affected States describing the status of the States' effort and these findings in more detail. These letters are included in the docket to this rulemaking.

III. Administrative Requirements

A. Notice and Comment Under the Administrative Procedure Act

This notice is final agency action but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs or 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. Executive Order 12866 (Regulatory Planning and Review)

This action is exempt from OBM review under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described under (A) above, it is not subject to the RFA.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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 mandates'' 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 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.

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, enabling officials of 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 governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The various CAA provisions discussed in this notice require the States to submit SIPs. This notice merely provides a finding that the States have not met those requirements. 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.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, 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 General Accounting Office. This rule is not a ''major rule'' as defined by APA 804(2), as amended.

The EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of ''particular applicability'' under

§ 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability.''

F. Paperwork Reduction Act

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

G. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of December 26, 2000.

Dated: December 19, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–32842 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC047–2024; FRL–6921–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology for Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision requires major sources of nitrogen oxides (NO_X) in the District to implement reasonably available control technology (RACT). EPA is approving these revisions to the District's SIP in accordance with the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on January 25, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 814–2177 or by e-mail at bunker.kelly@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 182 of the Clean Air Act (CAA), ozone nonattainment areas classified as serious or above are required to implement RACT for all major sources of NO_X by no later than May 31, 1995. The major source size is determined by the classification of the nonattainment area and whether it is located in the Ozone Transport Region which was established by the CAA. Because the District of Columbia is classified as a serious ozone nonattainment area, major stationary sources are defined as those that emit or have the potential NO_X to emit 50 tons or more of NO_X per year.

On January 13, 1994, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), now known as the District of Columbia Department of Public Health (DCPH), submitted revisions to its State Implementation Plan (SIP) that included a new regulation, Section 805, entitled ''Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen,'' to Subtitle I (Air Quality) of Title 20 of the District of Columbia Municipal Regulations (DCMR). Section 805 requires sources which emit or have the potential to emit 50 tons or more of NO_X per year to comply with RACT requirements by May 31, 1995.

On February 25, 1999 (64 FR 9272), EPA published a direct final rulemaking (DFR) conditionally approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR. A companion notice of proposed rulemaking (NPR) proposing conditional approval the District of Columbia's NO_X RACT regulation was published in the Proposed Rules section of the same February 25, 1999 **Federal Register** (64 FR 9289). In the February 25, 1999 DFR, EPA stated that if adverse comments were received within 30 days of its publication, EPA would publish a document announcing the withdrawal of that DFR before its effective date. Because EPA did receive adverse comments on the February 25, 1999 DFR within the prescribed time frame, we withdrew it. Under these circumstances the companion NPR remained in effect and interested parties submitted comments pursuant to that NPR. The withdrawal of the DFR document appeared in the **Federal Register** on April 13, 1999 (70 FR 17982).

On August 28, 2000, the District of Columbia submitted proposed revisions to EPA, for parallel processing, to Section 805 of Title 20 of the DCMR as a supplement to its January 13, 1994 SIP submittal. These revisions correct the deficiencies identified in the February 25, 1999 notice. On September 28, 2000 (65 FR 58249), EPA published a new NPR which withdrew its February 25, 1999 proposed conditional approval and instead proposed full approval of the District's NO_X RACT regulation as amended by its August 28, 2000 submittal. The specific requirements of the District of Columbia's NO_X RACT regulation and the rationale for EPA's approval are explained in the September 28, 2000 NPR and will not be restated here. No public comments were received on the September 28, 2000 NPR.

These proposed revisions were approved by the District of Columbia City Council on October 17, 2000, adopted on October 26, 2000 and became permanent and effective on December 8, 2000. EPA is fully approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR submitted on January 13, 1994 and supplemented on August 28, 2000, October 26, 2000 and December 8, 2000.

II. Final Action

EPA is fully approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR. This SIP revision was submitted by the District of Columbia on January 13, 1994 and supplemented with a revised version of section 805 of Title 20 of the DCMR submitted for parallel processing on August 28, 2000. The revised regulations were adopted by the District of Columbia on October 26, 2000 and became permanent and effective in the District on December 8, 2000. The District submitted the fully adopted and effective revised version of section 805 of Title 20 of the DCMR to EPA on December 8, 2000. The regulations formally adopted were exactly the same as the proposed version upon which EPA proposed approval. Approval of this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, DC ozone nonattainment area.