EPA APPROVED RHODE ISLAND REGULATIONS

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[FR Doc. E8–6183 Filed 3–26–08; 8:45 am] 
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52


RIN 2060–APO3

Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding concerning whether or not each State has submitted a complete State Implementation Plan (SIP) that provides the basic program elements specified in Clean Air Act (Act or CAA) section 110(a)(2) necessary to implement the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). By this action, EPA is identifying those States that: Have failed to make a complete submission for all requirements; have failed to make a complete submission for specific requirements; or have made a complete submission. The findings of failure to submit for all or a portion of a State’s SIP establish a 24-month deadline for EPA to promulgate Federal Implementation Plans (FIPs) to address the outstanding SIP elements unless, prior to that time, the affected States submit, and EPA approves, the required SIPs. The findings that all, or portions of a State’s SIP submission, are complete establish a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k).

DATES: The effective date of this rule is April 28, 2008.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Larry D. Wallace, PhD, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541–0906.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(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. EPA has determined that there is good cause for making this rule final 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 by the statutory date. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific State please contact the appropriate regional office:
The promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the State develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the State’s existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, States typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

Section 110(a)(2) lists specific elements that States must meet in these SIP submissions. The requirements include SIP infrastructure elements such as requirements for modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this action are listed in EPA’s October 2, 2007 memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM-2.5 National Ambient Air Quality Standards.” Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIP’s incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) SIPs required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to section 110(a)(2)(D), because EPA has previously addressed that requirement.1

As of 2004, States had not submitted complete SIPs to satisfy all of the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS revision. On March 4, 2004, Earth Justice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to these requirements. Subsequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to complete a Federal Register notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) as to whether each State has made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this Federal Register notice until March 17, 2008, based upon an

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1 EPA published a finding that all States had failed to submit SIPs addressing interstate transport for the 8-hour ozone and PM2.5 NAAQS, as required by section 110(a)(2)(D)(i). See 70 FR 21,147 (April 25, 2005).

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 ppm to 0.08 ppm (62 FR 38,856).

The CAA section 110(a) requires States to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the State develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the State’s existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, States typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

Section 110(a)(2) lists specific elements that States must meet in these SIP submissions. The requirements include SIP infrastructure elements such as requirements for modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this action are listed in EPA’s October 2, 2007 memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM-2.5 National Ambient Air Quality Standards.” Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIP’s incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to section 110(a)(2)(D), because EPA has previously addressed that requirement.1

As of 2004, States had not submitted complete SIPs to satisfy all of the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS revision. On March 4, 2004, Earth Justice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to these requirements. Subsequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to complete a Federal Register notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) as to whether each State has made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this Federal Register notice until March 17, 2008, based upon an

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1 EPA published a finding that all States had failed to submit SIPs addressing interstate transport for the 8-hour ozone and PM2.5 NAAQS, as required by section 110(a)(2)(D)(i). See 70 FR 21,147 (April 25, 2005).
agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the Consent Decree, EPA is making completeness findings for each State based upon what the Agency received from each State as of January 7, 2008. This notice reflects EPA's determinations with respect to the section 110(a)(2) requirements, based upon the submissions made by the States, either certifying that they have already met the requirements, making a submission to meet any outstanding requirements, or both.

For those States that have not yet made a submittal, or that made a submittal that was not complete with respect to each element of section 110(a)(2), EPA is making a finding of failure to submit. For those States that did not make any submittal by January 7, 2008, EPA is making a finding with respect to all of the section 110(a)(2) SIP elements.

II. This Action

The EPA is making a finding concerning whether each State has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. For those States that have not yet made a complete submission, or that have not made a submission that is complete for each element of section 110(a)(2), these findings establish a 24-month deadline for the promulgation by EPA of a FIP addressing these specific SIP elements, in accordance with section 110(c)(1). For those States that have submitted a complete SIP, and for those elements of SIPs in States for which EPA has identified only partial incompleteness, these findings establish a 12-month deadline for action upon the SIP, in accordance with section 110(k).

This action will be effective on April 28, 2008.

A. Finding of Failure To Submit for States That Failed to Make a Submittal

The following States failed to make a complete submittal to satisfy the requirements of section 110(a)(2) by January 7, 2008. EPA is by this action starting a 24-month deadline by which time EPA must promulgate a FIP for the affected States to address section 110(a)(2) requirements, if the affected States fail to submit, and obtain EPA approval of, the SIP revisions necessary to address these requirements. The States and territories that are affected by this finding of failure tosubmit are the following:

Region I: Vermont
Region VI: Texas
Region VIII: North Dakota
Region IX: Arizona, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands,

B. Finding of Failure To Submit Specific Elements of Section 110(a)(2)

The following States made submissions that address some, but not all of the section 110(a)(2) requirements, by January 7, 2008. EPA is by this action identifying the specific elements for which States have not made a complete submission:

Region I:
Massachusetts: The State of Massachusetts has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, therefore this action will not trigger any additional FIP obligation.

Region II:
New York: The State of New York has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

New Jersey: The State of New Jersey has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Virgin Islands: The Virgin Islands has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Region III:
Maryland: As required by sections 110(a)(2)(C) and (J), the State of Maryland has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NOx a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Pennsylvania: The Commonwealth of Pennsylvania has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program) for only the Allegheny County portion of the Commonwealth. However, this requirement has already been addressed by a FIP (Implementation of the Federal PSD program has been delegated to the Allegheny County Health Department) that remains in place, and therefore this action will not trigger any additional FIP obligation. All other areas of the Commonwealth, exclusive of Allegheny County, has a SIP approved PSD program in place.

Virginia: The Commonwealth of Virginia has failed to submit a SIP addressing the part C PSD permit program, which consists of changes required by the November 29, 2005 (70 FR 71612 page 71699) final rule that
made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Washington, DC: The District of Columbia has failed to submit a SIP addressing sections 110(a)(2)(B), (C) (the Part C PSD permit program), (E)(i), (F) (the public availability of reports), (H), and (J) (with respect to a part C Prevention of Significant Deterioration (PSD) permit program and to public notification under section 127).\textsuperscript{3} The section 110(a)(2)(C) (the Part C PSD permit program) requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation with respect to this requirement.

West Virginia: The State of West Virginia has failed to make a submittal with respect to sections 110(a)(2)(B), (E)(i), (G) (with respect to authority comparable to section 303), (H) and (J) (relating to public notification under section 127) and (M). The State of West Virginia has also failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and 40 CFR 52.21.

Delaware: As required by sections 110(a)(2)(C) and (J), the State of Delaware has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Region IV:

Florida: The State of Florida has failed to submit a SIP addressing the emergency episode plan requirement of section 110(a)(2)(C).

Georgia: The State of Georgia has failed to submit a SIP addressing the emergency episode plan requirements of section 110(a)(2)(G).

North Carolina: As required by sections 110(a)(2)(C) and (J), the State of North Carolina has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.\textsuperscript{4}

Tennessee: As required by sections 110(a)(2)(C) and (J), the State of Tennessee has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.\textsuperscript{4}

Region V:

Illinois: The State of Illinois has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Minnesota: The State of Minnesota has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Region VI:

Arkansas: As required by section 110(a)(2)(C) and (J), the State of Arkansas has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

New Mexico: As required by section 110(a)(2)(C) and (J), the State of New Mexico has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Oklahoma: As required by section 110(a)(2)(C) and (J), the State of Oklahoma has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO\textsubscript{x} a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Region IX:

California: The State of California has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program) that applies to some Air Districts within the State. However, this requirement has already been addressed for these Air Districts by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation. All other areas of the State, exclusive of these Air Districts have an approved PSD program in place.

C. List of States That Submitted Complete Submissions to Satisfy the Section 110(a)(2) Requirements

The following States have been determined by EPA to have made complete SIP submissions that address all of the section 110(a)(2) requirements by January 7, 2008:


Region IV: Alabama, Kentucky, Mississippi, and South Carolina.

Region V: Indiana, Ohio, Michigan, and Wisconsin.

Region VI: Louisiana.

Region VII: Iowa, Kansas, Nebraska, and Missouri.

Region VIII: Colorado, Montana, South Dakota, Utah, and Wyoming.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the
provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This rule relates to the requirement in the CAA for States to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that States submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The present final rule does not establish any new information collection requirement apart from that already required by law. Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that is a small industry as defined in the U.S. Small Business Administration (SBA) size standards (See 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which independently owned and operated is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandate” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify, and consider, a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by
Tribal officials in the development of regulatory policies that have Tribal implications.” This final rule does not have Tribal implications, as specified in Executive Order 13175. This rule responds to the requirement in the CAA for States to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that States submit SIPs that provide for implementation, maintenance, and enforcement of a new or revised NAAQS, and which satisfy the applicable requirements of section 110(a)(2), within 3 years of promulgation of such standard, or within shorter period as EPA may provide. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented an air quality management program related to the 1997 8-hour ozone NAAQS. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is making findings concerning whether or not each State has submitted a complete SIP that provides all basic program elements specified in CAA section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. The findings of failure to submit for all or a portion of a State’s SIP establish a 24-month deadline for EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected States submit, and EPA approves, the required SIPs.

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

This rule is not a “significant energy action” as defined in Executive Order 13211. “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. At the time of proposal of the implementation rule for the 1997 8-hour ozone standard, information on the methodology and data regarding the assessment of potential energy impacts regarding implementation of the 1997 8-hour standard was addressed in Chapter 6 of U.S. EPA’s Inventory Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 1997 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003. Subsequently, EPA issued an Addendum 1 to that analysis for the Phase 1 final rule (April 30, 2004 (69 FR 33951)) and designated nonattainment areas. By adopting the more flexible approaches while providing for attainment and maintenance of the 8-hour NAAQS as required by the CAA for the areas covered by this rulemaking, additional energy cost associated with more extensive use of less flexible approaches would be averted.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide DMB explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding concerning whether each State has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective April 28, 2008.

L. Judicial Review

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

Thus, any petitions for review of this action related to a finding of failure to submit related to the requirements of section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the Federal Register.

List of Subjects in 40 CFR Part 52
Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: March 17, 2008.

Robert J. Meyers, Principal Deputy Assistant Administrator.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.


In accordance with §679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2008 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at §679.20(e) and (f) apply at any time during a trip.

Classification
This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 21, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 24, 2008.

Emily H. Menashes, Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG70

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels in the Amendment 80 Limited Access Fishery in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod for vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2008 Pacific cod allowable catch (TAC) specified for vessels participating in the Amendment 80 limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2008, through 1200 hrs, A.l.t., June 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2008 Pacific cod TAC allocated to vessels