

EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 1997 8-hour ozone NAAQS maintenance plan for the area of El Paso County on January 15, 2009.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-8762-7]

Finding of Failure To Submit State Implementation Plans Required by the 1999 Regional Haze Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking a final action finding that 37 states, the District of Columbia, and the U.S. Virgin Islands have failed to submit for EPA review and approval State Implementation Plans (SIPs) for improving visibility in the nation's national parks and wilderness areas. Under the Clean Air Act (CAA) and EPA's implementing regulations, states were required to submit these SIPs to EPA by December 17, 2007. These SIPs must contain a number of elements, including importantly: For each mandatory Class I federal area in a state, reasonable progress goals providing for an improvement in visibility for the most impaired days and ensuring no degradation in visibility for the least impaired days; a long-term strategy for improving visibility, including enforceable emissions limitations, for meeting the reasonable progress goals; and Best Available Retrofit Technology

(BART) determinations for certain older existing stationary sources. By this action, the EPA is making a finding of failure to submit for those states that have not submitted a SIP or have submitted a SIP that addresses only part of the requirements.

DATES: *Effective Date:* This action is effective on January 15, 2009.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Todd Hawes, Office of Air Quality Planning and Standards, Air Quality Policy Division, *Mail Code:* C539-04, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541-5591.

SUPPLEMENTARY INFORMATION: For questions related to a specific state please contact the appropriate regional office:

| Regional offices | States |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
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| Lisa Hanf, Chief, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. | Arizona, California, Hawaii, Nevada. |
| Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101. | Alaska, Idaho, Oregon, Washington. |

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I. Background

In CAA section 169A, Congress declared 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)¹ which impairment results from manmade air pollution. EPA's visibility regulations, codified at 40 CFR 51.300-51.309, require states to develop regional haze SIPs with measures necessary to make reasonable progress towards remedying visibility impairment in Class I areas. The required SIP elements include: (1) For states with one or more Class I areas, the

¹ Areas designated as mandatory Class I Federal areas are those national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977. Visibility has been identified as an important value in 156 of these areas. See 40 CFR part 81, subpart D.

setting of reasonable progress goals for each Class I area; (2) calculations of baseline and natural visibility conditions for each Class I area located in a state; (3) the development of long term strategies addressing visibility impairment; (4) a monitoring strategy that is representative of all Class I areas within a state and reporting requirements; (5) the BART requirements; and (6) a description of how the state addressed any comments provided by Federal Land Managers. 40 CFR 51.308. EPA's visibility regulations also provide certain states with the option to submit regional haze SIPs based on the recommendations of the Grand Canyon Visibility Transport Commission. Such SIPs are required to include certain emission reduction strategies, including a program to reduce emissions of sulfur dioxide from stationary sources. 40 CFR 51.309.

Some states have submitted regional haze SIPs as required under the CAA and EPA's implementing regulations, but at present a number of states have not yet submitted final SIPs to EPA to satisfy these requirements of the CAA. The EPA is by this action making a finding of failure to submit for those states.

A. Statutory and Regulatory Requirements

Sections 169A and 169B of the CAA set forth the goals of the regional haze program and mandate that states develop SIPs to ensure that reasonable progress is made towards meeting those goals, including the requirements for BART. The regional haze rule issued in 1999 specifies the requirements and deadlines for state and local SIPs designed to meet the visibility protection provisions of the CAA. See 64 FR 35714. EPA revised certain requirements of the regional haze rule on July 6, 2005 (70 FR 39104) including the deadline for submitting regional haze SIPs, pursuant to the Consolidated Appropriations Act for Fiscal Year 2004, Public Law 108-199, January 23, 2004 (codified at 42 U.S.C. 7407(d)(7), CAA section 107(d)(7)). This statutory deadline for SIP submissions was December 17, 2007.

B. Consequences of Findings of Failure To Submit

Under the CAA section 110(c), EPA is required to promulgate a Federal Implementation Plan (FIP) within two years of the effective date of a finding that a state has failed to submit a SIP. The FIP requirement is void if a state submits a regional haze SIP, and EPA approves that SIP within the two year period.

II. This Action

In this action, EPA is finding that 37 states, the District of Columbia, and the U.S. Virgin Islands have failed to make all or part of the required SIP submissions to address regional haze. This finding starts the two year clock for the promulgation by EPA of a FIP. EPA is not required to promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA's finding.

At approximately the same time as the signing of this notice, EPA Regional Administrators are sending letters informing each state identified below that they have failed to make the required regional haze SIP submissions. These letters, and any accompanying enclosures, have been included in the docket to this action. This action will be effective on January 15, 2009. The states listed in the tables below failed to submit all or part of the required SIP elements per section 169A of the CAA and associated implementing regulations at 40 CFR 51.308 and 40 CFR 51.309.

Arizona, New Mexico, and Wyoming have opted to develop SIPs based on the recommendations of the Grand Canyon Visibility Transport Commission under 40 CFR 51.309. All three States have failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. Arizona and New Mexico have also failed to submit the plan element required by 40 CFR 51.309(d)(4), the alternate stationary source program for control of sulfur dioxide (SO₂).

Colorado has failed to submit plan elements required by 40 CFR 51.308(d), specifically, reasonable progress goals and long-term strategy elements addressing reasonable progress. Colorado has also failed to submit a plan meeting the BART requirements of 40 CFR 51.308(e), specifically, BART determinations and requirements, for two sources located in the state, Colorado Springs Utilities' Martin Drake Power Plant in Colorado Springs, Colorado and Cemex, Inc. Lyons Portland Cement Plant in Lyons, Colorado.

Michigan has also failed to submit plan elements required by 40 CFR 51.308(d), specifically, reasonable progress goals and long-term strategy elements addressing reasonable progress. In addition, Michigan has failed to submit a plan meeting the BART requirements of 40 CFR 51.308(e).

Specifically, for the following six sources located in the state, Michigan has failed to submit a plan with BART determinations and requirements: LaFarge Midwest, Inc. in Alpena, Michigan; St. Mary's Cement in Charlevoix, Michigan; Smurfit/Stone Container Corporation in Ontonagon, Michigan; Escanaba Paper Company in Escanaba, Michigan; and Cleveland Cliffs Corporation Tilden Mining Company and the Empire Iron Mining, both in Marquette, Michigan.

States and Territories Failing To Submit SIPs Addressing Any of the Required Regional Haze SIP Elements of 40 CFR 51.308

Alaska, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, U.S. Virgin Islands, Virginia, Washington, and Wisconsin.

States Failing To Submit SIPs Addressing Part of the Required Regional Haze SIP Elements

Arizona—40 CFR 51.309(g) and 40 CFR 51.309(d)(4).

Colorado—40 CFR 51.308(d) and 40 CFR 51.308(e) for two sources.

Michigan—40 CFR 51.308(d) and 40 CFR 51.308(e) for six sources.

New Mexico—40 CFR 51.309(g) and 40 CFR 51.309(d)(4).

Wyoming—40 CFR 51.309(g).

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a finding of failure to submit a SIP or required elements of SIP submissions pursuant to 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 SIPs that have already been submitted. *See* 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

B. Effective Date Under the Administrative Procedure Act

This action will be effective on January 15, 2009. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that are already overdue; and EPA previously cautioned the affected states that the SIP submissions were overdue and that EPA was considering taking this action. In addition, this action simply starts a "clock" for EPA to promulgate a SIP within two years. There are no mandatory sanctions enacted against the states by this action, although the Agency may employ discretionary sanctions, and the clock may be "turned off" through the submission of complete SIPs by the states followed by approval of the SIPs by EPA. These reasons support an effective date prior to 30 days after the date of publication.

C. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. However, the EPA submitted this action to the Office of Management and Budget (OMB) for review on December 11, 2008, and any changes made in response to OMB's recommendations have been documented in the docket for this action. The OMB released it on January 6, 2009.

D. 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.* Burden is defined at 5 CFR 1320(b). This rule relates to the requirement in the CAA for states to submit SIPs under section Part D of title I of the CAA.

E. Regulatory Flexibility Act (RFA)

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare

a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), and therefore it is not subject to the notice and comment requirement.

F. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1998 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposed no enforceable duty on any state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

G. 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, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

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, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to

meet the National Ambient Air Quality Standards and the Federal government acts as a backstop where states fail to take the required actions. This rule will not modify the relationship of the states and EPA for purposes of developing programs to implement the regional haze program. Thus, Executive Order 13132 does not apply to this rule.

H. 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 rule responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of the 1999 Regional Haze Regulations; Final Rule. The CAA requires each state to develop a SIP describing how the state will minimize the impacts of emissions emanating from within the state and contributing to visibility impairment in Class I areas. Tribes have elected not to submit Regional Haze SIPs and EPA will ensure air quality protection in Indian country consistent with the provisions of 40 CFR 49.11(a). Therefore, Executive Order 13175 does not apply to this action.

I. 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 this action is a procedural step toward reducing visibility impairment, which may also reduce pollution that may be harmful to children.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

K. 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 Congress, through OMB, 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.

L. 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 finds that certain states have not met the requirement to submit one or more SIPs and begins a clock requiring them to do so to meet this statutory obligation. If the state fails to submit the required SIPs or if they submit SIPs that EPA cannot approve, then EPA will be required to develop the plans in lieu of the states.

M. 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 rule report, a copy of 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 January 15, 2009.

N. 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 this final action is published in the **Federal Register**. Filing a petition for reconsideration 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 making findings of failure to submit regional haze SIPs identified in section II above, 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

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 9, 2009.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

[FR Doc. E9-779 Filed 1-14-09; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-42

[FMR Amendment 2009-01; FMR Case 2008-102-2; Docket 2008-0001; Sequence 3]

RIN 3090-AI60

Federal Management Regulation; FMR Case 2008-102-2, Utilization, Donation, and Disposal of Foreign Gifts and Decorations

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) to revise its policy on appraisals of foreign gifts and decorations, and to encourage agencies to use various methods in obtaining appraisals, including reliable retail Web sites.

DATES: *Effective Date:* February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Director, Asset Management (MTA), at (202) 501-3828, or e-mail at robert.holcombe@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FMR Amendment 2009-01, FMR Case 2008-102-2.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends part 102-42 of the Federal Management Regulation (FMR) (41 CFR part 102-42) to bring this policy into alignment with 5 U.S.C. 7342 by placing the responsibility and guidelines for obtaining appraisals for foreign gifts and decorations onto the agencies (as required by 5 U.S.C. 7342(g)(2)(b)). Removing the policies from this part that specify the format and content of an appraisal will give agencies greater flexibility in obtaining appraisals. The flexibility is not intended to preclude the reporting of gifts, nor does it eliminate the need for a commercial appraisal when a retail value appraisal is not an option. This applies to all gifts, even when the recipient wishes to retain and/or purchase the item. This flexibility may include agency use of reliable retail Web sites (e.g., Department store Web sites, Commercial merchandise catalogs) to obtain the retail value in the United States of the items(s). This excludes the use of any auction or discount sale offerings that appear on the Internet or written publications (e.g., EBAY, Craig's List, or other non-commercial sites). Also, GSA now requires the employing agency to obtain an appraisal of a gift or decoration that the agency has retained for official use and no longer needs before accepting the agency's report of the item as excess personal property. Additionally, appraisals are required for gifts that are personalized (e.g., Books signed by the author, or gifts personally labeled).

This final rule also updates the address in section 102-42.95.

B. Executive Order 12866

This final rule is excepted from the definition of "regulation" or "rule" under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that executive order.