

EPA-APPROVED KANSAS SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit or case No. | State effective date | EPA approval date | Explanation |
|------------------------------|--------------------|----------------------|---|-------------|
| (5) Exide Technologies | 1690035 | 8/18/14 | 7/20/16, [Insert Federal Register citation]. | |

* * * * * (e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|----------------------|---|--|
| (43) Attainment plan for 2008 lead NAAQS. | Salina | 2/3/15 | 7/20/16, [Insert Federal Register citation]. | [EPA-R07-OAR-2015-0708; 9949-13-Region 7]. |

[FR Doc. 2016-17065 Filed 7-19-16; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0015; A-1-FRL-9949-17-Region 1]

Air Plan Approval; RI; Regional Haze Five Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island on January 7, 2015. This SIP revision includes Rhode Island’s regional haze progress report and adequacy determination for the first regional haze implementation period. This action is being taken under the Clean Air Act (CAA).

DATES: This direct final rule will be effective September 19, 2016, unless EPA receives adverse comments by August 19, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2015-0015 by one of the following methods at www.regulations.gov, or via email to arnold.anne@epa.gov. For comments submitted at Regulations.gov, follow the

online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comments received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109—3912, telephone (617) 918-1697, facsimile (617) 918-0697, email mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background
- II. Requirements for the Regional Haze Progress Report SIPs and Adequacy Determinations
- III. EPA’s Evaluation of Rhode Island’s SIP Revision
 - A. Regional Haze Progress Report
 - B. Determination of Adequacy of Existing Regional Haze Plan
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

States are required to submit a progress report in the form of a SIP revision every five years which evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area (Class I area)¹ within the state and each Class I area outside of the State which may be affected by emissions from within the state. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state’s existing SIP. See 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze SIP. On August 7, 2009, Rhode Island submitted the State’s first Regional Haze SIP in accordance with the requirements of 40 CFR 51.308.²

¹ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)).

² On May 22, 2012, EPA approved Rhode Island’s August 7, 2009 Regional Haze SIP to address the

On January 7, 2015, the Rhode Island Department of Environmental Management (RI DEM) submitted a revision to the Rhode Island SIP detailing the progress made in the first planning period toward implementing the Long Term Strategy (LTS) outlined in the 2009 Regional Haze submittal. Because Rhode Island is not home to a Class I area, the State's Regional Haze SIP for the first planning period does not establish RPGs. During the consultation process with nearby States with Class I areas, it was determined that Rhode Island's emissions do not cause or contribute to the visibility impairment at any Class I area. *See* 77 FR 30214. However, the State still adopted a LTS to reduce emissions during the first regional haze planning period. The January 7, 2015 SIP also included a determination that the State's existing Regional Haze SIP requires no substantial revision to achieve the established regional haze visibility improvements and emission reduction goals for 2018.

II. Requirements for the Regional Haze Progress Report SIPs and Adequacy Determination

Under 40 CFR 51.308(g), States must submit a regional haze progress report, as a SIP revision, every five years and must address the seven elements found in 40 CFR 51.308(g). As described in further detail in section III of this rulemaking, 40 CFR 51.308(g) requires: (1) A description of the status of measures in the approved regional haze SIP; (2) a summary of emissions reductions achieved; (3) an assessment of the visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; (6) an assessment of the sufficiency of the approved regional haze SIP; and (7) a review of the state's visibility monitoring strategy.

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of the following four possible actions based on information in the progress report: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed; (2) provide notification to EPA

(and other state(s) that participated in the regional planning process) if the state determines that the existing regional haze SIP is, or may be, inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional haze planning process, and collaborated with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze SIP is, or may be, inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another county; or (4) revise its regional haze SIP to address deficiencies within one year if the state determines that its existing regional haze SIP is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emission from sources within the state.

III. EPA's Analysis of Rhode Island's SIP Revision

On January 7, 2015, Rhode Island submitted the "Rhode Island Regional Haze Five Year Progress Report" (Progress Report) to EPA as a SIP revision.

A. Regional Haze Progress Report

This section summarizes each of the seven elements that must be addressed by the Progress Report under 40 CFR 51.308(g); how Rhode Island's Progress Report addressed each element; and EPA's analysis and determination as to whether the State satisfied each element.

The provision under 40 CFR 51.308(g)(1) requires a description of the status of implementation of all measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the state which may be impacted by emissions from the State. During the regional haze planning process, an area-of-influence modeling analysis based on back trajectories was used to assess Rhode Island's contribution to visibility impairment in other states.³ Based on this analysis, Rhode Island was found to not influence visibility impairment at any Class I area. In the 2009 Rhode Island Regional Haze SIP, however, the State agreed to pursue the coordinated course of action agreed to by the Mid-Atlantic/Northeast

Visibility Union (MANE-VU)⁴ to assure reasonable progress toward preventing any future, and remedying any existing, impairment of visibility in the mandatory Class I areas within the MANE-VU region. Those measures are: Implementation of best available retrofit technology (BART) requirements; a low-sulfur fuel oil strategy; a targeted electricity generating unit (EGU) strategy; and continued evaluation of other control measures.⁵

In its Progress Report, Rhode Island summarized the status of these measures in accordance with the requirements under 40 CFR 51.308(g)(1). Rhode Island is not home to any BART sources or targeted EGUs. Although Rhode Island did not include a low sulfur fuel oil strategy in its 2009 Regional Haze SIP, the State committed to adopt a low-sulfur fuel strategy during the first planning period. The 2015 Progress Report details the adoption and implementation of the State's revised low sulfur fuel oil regulation⁶ that requires fuel sold in the state meet a sulfur in fuel limit of 0.05% for distillate oil by 2014, 0.015% for distillate oil by 2018, and 0.5% for residual oil by 2018. With respect to the continued evaluation of other control measures, Rhode Island reiterates the State's continued participation in MANE-VU consultations.

EPA finds that Rhode Island's analysis adequately addresses the provision under 40 CFR 51.308(g)(1). The State documents the implementation of a low sulfur fuel strategy which the State committed to adopt in the 2009 Regional Haze SIP.

The provision under 40 CFR 51.308(g)(2) requires a summary of the emission reductions achieved in the state through the measures subject to the requirements under 40 CFR 51.308(g)(1). In the Progress Report, RI DEM presents the State's annual sulfur dioxide (SO₂) emissions from the 2002 RI Regional Haze SIP baseline and from the 2011

⁴ MANE-VU is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

⁵ The MANE-VU "Ask" was structured around the finding that sulfur dioxide (SO₂) emissions were the dominant visibility impairing pollutant at the Northeastern Class I areas. See "Regional Haze and Visibility in the Northeast and Mid-Atlantic States," January 31, 2001.

⁶ EPA approved Rhode Island's Regulation No. 8—Sulfur Content of Fuels into the Rhode Island SIP on October 7, 2015. *See* 80 FR 60541.

first implementation period for regional haze. *See* 77 FR 30214.

³ *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, August 2006 http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu_haze_contribution_assessment-2006-0831.pdf.

emission inventory.⁷ SO₂ emissions decreased from 8,026 tons per year (tpy) in 2002 to 4,839 tpy in 2011, *i.e.*, approximately a 40% reduction. RI DEM estimates that the adoption of the low sulfur fuel rule, which has compliance dates in 2014 and 2018, will result in an additional 3,000 tpy SO₂ reduction in the point and area sectors by 2018. Thus, current projections from 2011 to 2018 would be 4,839 tpy minus 3,000 tpy, or approximately 1,839 tpy. This compares well with the original RI Regional Haze SIP projection of 1,703 tons of SO₂ emissions in 2018.

EPA finds that Rhode Island has adequately addressed the provision under 40 CFR 51.308(g)(2). As discussed above, Rhode Island was not found to be contributing to the visibility impairment at any Class I area. However, the State has demonstrated a 40% reduction in the predominant visibility impairing pollutant (SO₂) and has adopted a low sulfur fuel strategy to further reduce SO₂ emissions from area and point sources by 2018.

The provisions under 40 CFR 51.308(g)(3) require that states with Class I areas within their borders provide the following information for the most impaired days and least impaired days⁸ for each area, with values expressed in terms of five-year averages of these annual values: (1) Current visibility conditions; (2) the difference between current visibility conditions and baseline visibility conditions; and (3) the change in visibility impairment over the past five years.

Because Rhode Island does not have any Class I areas within its borders and the state was found not to contribute to any other Class I area, EPA concludes that Rhode Island's progress report is not required to address 40 CFR 51.308(g)(3).

The provision under 40 CFR 51.308(g)(4) requires an analysis tracking emissions changes of visibility-

⁷ The 2011 data is the 2011 National Emission Inventory (NEI) data. NEI inventory uses state-supplied data or model inputs for area and non-road estimates. The following adjustments were submitted by the state: Emissions for area source industrial and commercial boilers were recalculated using a residual oil sulfur content of 1%, rather than 2.25% to reflect the actual sulfur content of oil sold in the State and sources that RI DEM inventories as point sources were subtracted from the appropriate categories in EPA's non-point (area source) inventory to avoid double counting of those emissions.

⁸ The "most impaired days" and "least impaired" days in the regional haze rule refers to the average visibility impairment (measured in deciviews) for twenty percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. See 40 CFR 51.301.

impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory. In its Progress Report to address the requirements of 40 CFR 51.308(g)(4), Rhode Island presents data from the baseline 2002 and 2011 NEI statewide emissions inventories for SO₂, oxides of nitrogen (NO_x), and fine particulate (PM_{2.5}) for Point, Area, Onroad, and Nonroad sectors. Overall, during this period, SO₂ emissions have decreased by 40% and NO_x emissions have decreased by 17%. There was a 770 tpy or 26% increase in the PM_{2.5} inventory during this same time period. RI DEM explained that the increased Area PM_{2.5} inventory was due to the utilization of a wood combustion calculation tool used for the 2011 inventory which was not available for the 2002 inventory. Thus, the resulting emissions for this sub-category is not comparable between the 2002 and 2011 inventory.

EPA finds that Rhode Island's Progress Report adequately addresses the provision under 40 CFR 51.308(g)(4). RI DEM compared the most recent updated emission inventory data available at the time of the development of the Progress Report with the baseline emissions from the Regional Haze SIP. The Progress Report appropriately details the 2011 SO₂, NO_x, and PM_{2.5} reductions achieved, by sector, thus far in the first Regional Haze planning period.

The provision under 40 CFR 51.308(g)(5) requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in the Class I areas impacted by the state's sources. In the Progress Report, RI DEM reiterated that Rhode Island was found not to be causing or contributing to the visibility impairment at any Class I area, and that the State was implementing a low-sulfur fuel oil strategy which will lead to additional reductions in SO₂ and PM_{2.5} emissions. The RI DEM also cited a Northeast States for Coordinated Air Use Management (NESCAUM) report which indicates that the MANE-VU Class I areas are on track to meet all of the 2018 visibility goals.⁹

EPA finds that Rhode Island adequately addressed the provision under 40 CFR 51.308(g)(5). There have not been any significant changes in

anthropogenic emissions within the state which has limited or impeded progress in reducing pollutant emissions and improving visibility at the nearby Class I areas.

The provision under 40 CFR 51.308(g)(6) requires an assessment of whether the current regional haze SIP is sufficient to enable the state, or other states, to meet the RPGs for the Class I areas affected by emissions from the state. In the Progress Report, Rhode Island reiterated that the State is not home to any Class I area nor were the emissions from Rhode Island found to cause or contribute to the visibility impairment at any nearby Class I area. Rhode Island also showed that SO₂ emissions have decreased by 40% as of 2011 and that additional SO₂ reductions are expected with the implementation of the adopted low-sulfur fuel oil strategy. Rhode Island found that the Regional Haze SIP submittal was sufficient.

EPA finds that the state has adequately addressed the provision under 40 CFR 51.308(g)(6) which requires an assessment of whether the Rhode Island Regional Haze SIP submittal is sufficient to enable the state, or other states, to meet the RPGs for the Class I areas affected by emissions from the state.

The provision under 40 CFR 51.308(g)(7) requires the review of a state's visibility monitoring strategy for Class I areas and an assessment of whether any modifications to the monitoring strategy are necessary. Because Rhode Island does not have any Class I areas within its borders, EPA concludes that Rhode Island's Progress Report is not required to address 40 CFR 51.308(g)(7).

B. Determination of Adequacy of the Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report SIP.

In the Progress Report SIP, Rhode Island took the action provided for by the provisions under 40 CFR 51.308(h)(1), which allow a state to submit a negative declaration to EPA if the state determines that the existing SIP requires no further substantive revision at this time to achieve the RPGs at nearby Class I areas. The basis for the State's negative declaration is the determination that emissions from Rhode Island do not cause or contribute to the visibility impairment at any Class I area. In addition, the State demonstrated SO₂ emission reductions achieved since the 2002 baseline of the Rhode Island Regional Haze SIP and

⁹ NESCAUM for MANE-VU, "Tracking Visibility Progress 2004-2011," revised May 24, 2013. <http://www.nescaum.org/documents/manevu-trends-2004-2011-report-final-20130430.pdf/view>.

outlined projected additional SO₂ emission reductions expected by 2018.

EPA finds that Rhode Island has adequately addressed the requirements of 40 CFR 51.308(h). Even though Rhode Island does not impact the visibility at any nearby Class I areas, the State has reduced emissions of visibility impairing pollutants and is on track to achieve the long term strategy detailed in its 2009 Regional Haze SIP for the first regional haze planning period. Therefore, the existing Rhode Island Regional Haze SIP requires no substantive revisions to achieve the RPGs for nearby Class I areas.

IV. Final Action

EPA is approving Rhode Island's Regional Haze Five Year Progress Report SIP revision, submitted by RI DEM on January 7, 2015, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 19, 2016 without further notice unless the Agency receives relevant adverse comments by August 19, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 19, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment,

paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

- 2. In § 52.2070, paragraph (e) table is amended by adding a new entry at the end of the table to read as follows:

§ 52.2070 Identification of plan.
(e) * * *

RHODE ISLAND NON REGULATORY

| Name of non regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date | Explanations |
|---|---|-------------------------------------|--|--------------|
| Rhode Island Regional Haze Five Year Progress Report. | Statewide | Submitted 1/7/2015 | 7/20/2016 [Insert Federal Register citation]. | |

[FR Doc. 2016-16941 Filed 7-19-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R03-OAR-2016-0270; FRL-9949-34-Region 3]****Finding of Failure To Submit a State Implementation Plan; Maryland; Interstate Transport Requirements for the 2008 8-Hour National Ambient Air Quality Standards for Ozone****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that Maryland has failed to submit an infrastructure state implementation plan (SIP) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, these requirements pertain to the obligation to prohibit emissions which significantly contribute to nonattainment, or interfere with maintenance, of the 2008 8-hour ozone NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for EPA to promulgate a federal implementation plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements.

DATES: This final rule is effective on August 19, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0270. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other 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. Publicly available docket materials are available through www.regulations.gov or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by email at powers.marilyn@epa.gov.**SUPPLEMENTARY INFORMATION:****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. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

I. Background and Overview*A. Interstate Transport SIPs*

CAA section 110(a) imposes an obligation upon 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 that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers to this type of SIP submission as the “infrastructure” SIP because it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1) or interfere with maintenance of the NAAQS in any other state (prong 2). Interstate transport prongs 1 and 2, also called the “good neighbor” provisions, are the requirements relevant to this findings document.

Pursuant to CAA section 110(k)(1)(B), EPA must determine no later than 6 months after the date by which a state

is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). EPA refers to the determination that a state has not submitted a SIP that meets the minimum completeness criteria as a “finding of failure to submit.” If EPA finds a state has failed to submit a SIP to meet its statutory obligation to address 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding therefore starts a 2-year clock for promulgation by EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

B. Finding of Failure To Submit for States That Did Not Submit a SIP

On March 12, 2008, EPA strengthened the NAAQS for ozone. EPA revised the 8-hour primary ozone standard from 0.08 parts per millions (ppm) to 0.075 ppm. EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard, including the interstate transport requirements, were due March 12, 2011.

On December 27, 2012, Maryland submitted an infrastructure SIP for the 2008 ozone NAAQS. EPA determined the December 27, 2012 SIP submittal as complete on January 2, 2013. On May 2, 2014, EPA proposed approval of Maryland’s infrastructure SIP submittal for the 2008 ozone NAAQS, but did not propose to take action on the portion of the submittal related to section 110(a)(2)(D)(i)(I), stating that EPA would take separate action on this part of the submittal. *See* 79 FR 25054.

On July 13, 2015, EPA published a rule finding that 24 states failed to submit complete SIPs that addressed the “good neighbor” provision for the 2008 Ozone NAAQS. *See* 80 FR 39961 (July 13, 2015).¹ The finding action triggered a 2-year clock for the EPA to issue FIPs to address the “good neighbor”

¹ This finding is included in the docket for this action and available online at www.regulations.gov.