places it appears, and adding, in its place, "December 31, 2011."

[FR Doc. 2010–13871 Filed 6–8–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0409; FRL–9159–5]

Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the 2006 National Ambient Air Quality Standards for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a finding that certain states have failed to submit State Implementation Plans (SIPs) to satisfy the attainment and maintenance interstate transport requirements of the Clean Air Act (CAA) with respect to the 2006 24-hour National Ambient Air Quality Standards (NAAQS) for fine particulate matter (24-hour $PM_{2.5}$). Pursuant to the CAA, states are required to submit SIPs that satisfy the requirements of the CAA related to interstate transport of pollution. This document addresses two elements of that requirement. A state must address its significant contribution to nonattainment and its interference with maintenance of a NAAQS in any neighboring state. The CAA requires that states submit SIPs to meet the applicable requirements of the CAA within 3 years after the promulgation of a new or revised NAAQS, or within such shorter period as EPA may provide. On September 21, 2006, EPA promulgated a final rule establishing new standards for the 24-hour $PM_{2.5}$ NAAQS. At present, 29 states or territories have not yet submitted complete SIPs to satisfy the section 110(a) nonattainment and maintenance transport requirements. Through this action, EPA is making a finding of failure to submit these SIPs which creates a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA unless, prior to that deadline, a state makes a submission to meet these two requirements of the CAA and EPA approves such submission.

DATES: The effective date of this rule is July 9, 2010.

FOR FURTHER INFORMATION CONTACT: General questions concerning this final rule should be addressed to Ms. Gobeail McKinley, Office of Air Quality Planning and Standards, Geographic Strategies Group, Mail Code C539–04, Research Triangle Park, NC 27711; telephone (919) 541–5246; *e-mail address: gobeail.mckinley@epa.gov.*

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

Regional offices	States
Ray Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866.	Puerto Rico and the U.S. Virgin Islands.
Cristina Fernandez, Associate Director, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2023.	Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Michigan, Minnesota, and Wisconsin.
Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202.	Louisiana and Oklahoma.
Josh Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606.	Iowa and Nebraska.
Monica Morales, Leader, Air Quality Planning Unit, EPA Region VIII, U.S. EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Lisa Hanf, Chief, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.
Michael McGown, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.

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I. Background

On October 17, 2006, EPA published a final rule revising the 24-hour standard for fine particulate matter ($PM_{2.5}$) from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires states to submit revised SIPs that provide for the implementation, maintenance, and enforcement of a new or revised standard within 3 years after promulgation of such standard, or within such shorter period as EPA may prescribe. Section 110(a)(2)(D)(i) contains four elements that revised SIPs must address. This findings notice addresses the first two elements which require each state to submit SIPs which contain adequate provisions to prohibit air pollution within the state that (1) contributes significantly to another state's nonattainment of the NAAQS; or (2) interferes with another state's maintenance of the NAAQS. Section 110(a)(1) imposes the obligation upon states to make a SIP submission 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.

States were required to have submitted complete SIPs that addressed

the section 110(a)(2)(D)(i)(I) requirement related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS by September 21, 2009. At present, 29 states and territories have not made a SIP submittal that addresses the attainment and maintenance aspects of this requirement. This includes the following states or territories: Alaska, Colorado, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. EPA is making a finding of failure to submit SIPs for these two transport requirements for all these states and territories. It should be noted that a number of other states initially submitted SIP revisions to address this requirement. EPA will review and make a separate determination for those SIPs.

This finding establishes a 2-year deadline for promulgation by EPA of a FIP, in accordance with section 110(c)(1), for any state that either does not submit or EPA can not approve a SIP as meeting the attainment and maintenance requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. This action does not result in sanctions pursuant to section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas, or to a SIP Call pursuant to section 110(k)(5).

II. This Action

By this action, EPA is making the finding that states have failed to submit complete SIPs to address the attainment and maintenance requirements of section 110(a)(2)(D)(i)(I) of the CAA for the revised 2006 24-hour $PM_{2.5}$ NAAQS. This finding creates a 2-year deadline for the promulgation of a FIP by EPA for a particular state or territory, unless that state or territory submits a SIP to satisfy these section 110(a)(2)(D)(i)(I) requirements, and EPA approves such submission prior to that deadline.

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedures Act (APA)

This is a final EPA action, which is subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). However, EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary 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 to meet the requirement by the statutory deadline.

B. 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 by the Office of Management and Budget under the EO.

C. 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 1320.3(b). This action relates to the requirement in the CAA for states to submit SIPs under section 110(a)(1) that implements the CAA requirements for the revised 24-hour $PM_{2.5}$ 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 action does not establish any new information collection requirement apart from that required by law.

D. Regulatory Flexibility Act

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 APA or any other statute unless the EPA 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 action on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR, part 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 dominate in its field.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See, Michigan* v. *EPA,* 213 F.3d 663, 668–69 (DC Cir., 2000), *cert. den.,* 532 U.S. 903 (2001). This rule would not establish requirements applicable to small entities. Instead, it would require states to develop, adopt, and submit SIPs to meet the requirements of section 110(a)(2)(D)(i), and would leave to the states the task of determining how to meet those requirements, including which entities to regulate. Moreover, because affected states would have discretion to choose the sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not predict the effect of the rule on small entities. After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In addition, although the action is subject to the Administrative Procedures Act, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b); therefore, it is not subject to the notice and comment requirement.

E. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action implements mandate(s) specifically and explicitly set forth by the Congress in CAA section 110(a)(2)(D)(i)(I) without the exercise of any policy discretion by EPA.

This action does not create any additional requirements beyond those of the 2006 24-hour $PM_{2.5}$ NAAQS (71 FR 61144, October 17, 2006). Therefore, no UMRA analysis is needed. This rule responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS within 3 years of promulgation of such standard, or shorter period as EPA may provide. This action does not impose any requirements beyond those specified in the Act.

Therefore, this action is not subject to the requirements of sections 202 or 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.

F. Executive Order 13132: Federalism

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 EO 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action 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 action.

G. 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 action responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2) of the CAA for the 2006 24-hour $PM_{2.5}$ 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 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 action 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 2006 24-hour $PM_{2.5}$ NAAQS at this time. Furthermore, this action 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 action does nothing to modify that relationship. Because this action does not have tribal implications, Executive Order 13175 does not apply.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 2006 24-hour $PM_{2.5}$ NAAQS on children. The results of this risk assessment are contained in the final rule for 24-hour $PM_{2.5}$ NAAQS (71 FR 61144, October 17, 2006).

I. Executive Order 13211: Actions Concerning Regulations 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.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

K. 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 lacks the discretionary authority to address environmental justice in this final action. This action responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour $PM_{2.5}$ 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. EPA is merely determining whether states have complied with this statutory requirement.

L. Congressional Review Act

The Congressional Review Act (CRA), 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 9, 2010. EPA will submit a report containing this action 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 action in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 808(2).

M. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the EPA action consists of "nationally applicable regulations promulgated, or

final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This action making a finding of failure to submit SIPs related to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS is "nationally applicable" within the meaning of section 307(b)(1).

For the same reasons, the Administrator also is determining that the requirements related to these finding of failure to submit SIPs related to the section 110(a)(2)(D)(i)(I) requirement is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the findings of failure to submit SIPs apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history call for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the District of Columbia Circuit.

Thus, any petitions for review of this action related to a findings of failure to submit SIPs related to the requirements of section 110(a)(2)(D)(i)(I) of the CAA 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 28, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–13457 Filed 6–8–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3025 and 3052

[Docket No. DHS–2009–0081]

RIN 1601–AA57

Revision of Department of Homeland Security Acquisition Regulation; Restrictions on Foreign Acquisition (HSAR Case 2009–004)

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Homeland Security is adopting the amendments to its Homeland Security Acquisition Regulation that were issued under an interim rule on August 17, 2009, as final, without change, to implement a statute limiting the acquisition of products containing textiles from sources outside the United States.

DATES: *Effective Date:* June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, (202) 447–5197.

SUPPLEMENTARY INFORMATION:

I. Background

The American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Public Law 111–5, 123 Stat. 115, 165–166 (Feb. 17, 2009), contains restrictions on the Department of Homeland Security's (DHS) acquisition of certain foreign textile products. Specifically, the Recovery Act at section 604, codified as 6 U.S.C. 453b, limits the Department's acquisition of foreign textile products under DHS contract actions entered into on or after August 16, 2009, using funds appropriated or otherwise made available to DHS on or before February 17, 2009, the date of the Act. Section 604 is sometimes referred to as the "Kissell Amendment." DHS may not use those funds for the procurement of certain clothing and other textile items directly related to the national security interests of the United States if such items are not domestically grown, reprocessed, reused, or produced in the United States.

Section 604 does, however, contain exceptions. The law requires DHS to apply these restrictions in a manner consistent with United States obligations under international agreements (such as free trade agreements and the World Trade Organization Agreement on Government Procurement). Moreover, restrictions on some of the covered textile items do not apply to commercial item acquisitions. Also, the Recovery Act's restriction on the Department's acquisition of covered foreign textiles does not apply to: purchases for amounts not greater than the simplified acquisition threshold (SAT) (currently $100,000); when covered items of satisfactory quality and sufficient quantity cannot be procured as needed at United States market prices; when a covered item contains less than 10% non-compliant fibers; when the procurement is made by vessels in foreign waters; or for emergency procurements outside of the United States.

On August 17, 2009, DHS published an interim rule with request for comments discussing the agency's implementation of the Kissell Amendment and providing specific amendments to the Homeland Security Acquisition Regulation (HSAR) at parts 3025 and 3052. 74 FR 41346, Aug. 17, 2009. This final rule adopts that interim rule as final without change, revising the HSAR to add solicitation provisions, contract clauses and related policy statements implementing these requirements and exceptions for certain DHS contracts, option exercises and orders.

II. Disposition of Public Comments

In response to the request for comments on the interim rule, DHS received comments from 26 commenters, consisting of trade associations, individuals, companies and a Member of Congress. The majority of the commenters expressed their favorable views of section 604 and suggested that DHS consider several technical changes to improve that implementation.

The changes to the interim rule that were most commonly recommended by commenters fall into four categories:

- Make the "de minimis" exception a post-award forbearance decision; do not make the "de minimis" exception an advance regulatory exemption in the HSAR;
- Eliminate the HSAR definition of "national security interests"; cover all DHS acquisitions as being related to "national security interests" of the United States;