the eye.'' is removed and the language ''all of which are for treatment of the eye.'' is added in its place.

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ **Paragraph 1.** The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101(g), Public Law 104–191, 101 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§ 2590.731 [Corrected]

■ 2. Section 2590.731(c)(2)(i), the language '' § 2590.701–3(a)(1)(i) (for purposes of'' is removed and the language ''§ 2590.701–3(a)(2)(i) (for purposes of'' is added in its place.

■ 3. Section 2590.731(c)(2)(ii), the language ''and § 2590.701–3(a)(1)(ii) (for purposes'' is removed and the language ''§ 2590.701–3(a)(2)(ii) (for purposes'' is added in its place.

■ 4. Section 2590.731(c)(2)(iii), the language ''the Act and §§ 2590.701–3(a)(1)(iii) and'' is removed and the language ''the Act and §§ 2590.701–3(a)(2)(iii) and'' is added in its place.

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ **Paragraph 1.** The authority citation for part 146 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792, of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, 30gg–92 as amended by HIPAA (Pub. L. 104–191, 110 Stat. 1936), MHPA (Pub. L. 104–204, 110 Stat. 2944, as amended by Pub. L. 107–116, 115 Stat. 2177), NMHPA (Pub. L. 104–204, 110 Stat. 2935), WHCRA (Pub. L. 105–277, 112 Stat. 2681–436), and section 103(c)(4) of HIPAA.

§ 146.125 [Corrected]

■ 5. Section 146.125, the language ''Sections 146.111 through 146.119,'' is removed and the language ''Section 144.103, §§ 146.111 through 146.119,'' is added in its place.

§ 146.143 [Corrected]

■ 6. Section 146.143(b), the language ''section 514 of the Act with respect to'' is removed and the language ''section 514 of ERISA with respect to'' is added in its place.

■ 7. Section 146.143(c)(2)(i), the language ''§ 146.111(a)(1)(i) (for purposes of'' is removed and the language ''§ 146.111(a)(2)(i) (for purposes of'' is added in its place.

■ 8. Section 146.143(c)(2)(ii), the language ''PHS Act and § 146.111(a)(1)(ii) (for'' is removed and the language ''PHS Act and § 146.111(a)(2)(ii) (for'' is added in its place.

■ 9. Section 146.143(c)(2)(iii), the language ''the PHS Act and §§ 146.111(a)(1)(iii)'' is removed and the language ''the PHS Act and §§ 146.111(a)(2)(iii)'' is added in its place.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch Legal Processing Division, Associate Chief Counsel (Procedure and Administration), Internal Revenue Service, Department of the Treasury.

Dated this 16th day of March, 2005.

Ann Agnew,

Executive Secretary, Department of Health and Human Services.

Dated this 15th day of February, 2005.

Daniel J. Maguire,

Director, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 05–8154 Filed 4–22–05; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7885–7]

Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM 2.5

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is today making a finding that States have failed to submit State Implementation Plans (SIPs) to satisfy the requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA) for the 8-hour ozone and PM2.5 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) National Ambient Air Quality Standards (NAAQS). Section 110(a)(1) of the CAA requires that States submit SIPs to meet the applicable requirements of section 110(a)(2) within 3 years after the promulgation of a new or revised NAAQS, or within such shorter period as EPA may provide. Pursuant to section 110(a)(1), States are required to submit SIPs that satisfy the requirements of section 110(a)(2)(D)(i) related to interstate transport of pollution. At present, States have not yet submitted SIPs to satisfy this requirement of the CAA, and EPA is by this action making a finding of failure to submit which starts a 2-year clock for the promulgation of a Federal Implementation Plan (FIP) by EPA unless, prior to that time, each State makes a submission to meet the requirements of section 110(a)(2)(D)(i) and EPA approves such submission.

DATES: The effective date of this rule is May 25, 2005.

FOR FURTHER INFORMATION CONTACT: General questions concerning this final rule should be addressed to Mr. Larry D. Wallace, Ph.D., Office of Air Quality Planning and Standards, Air Qaulity Strategies and Standards Division, Mail Code C504–02, Research Triangle Park, N.C. 27711; telephone (919) 541–0906.

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

Regional offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Regional offices	States
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth, Street, SW, 12th Floor, Atlanta, GA 30303, Kentucky, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–4447.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Rebecca Weber, Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7200.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606.	Iowa, Kansas, Missouri, and Nebraska.
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th, Suite 300, Denver, CO 80202, (303) 312–6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Steven Barhite, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3980.	Arizona, California, Guam, Hawaii, and 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, (206) 553–6985.	Alaska, Idaho, Oregon, and Washington.

Table of Contents

I. Background
II. Today's Action
III. Statutory and Executive Order Reviews
A. Notice and Comment Under the Administrative Procedures Act
B. Executive Order 12866: Regulatory Planning and Review
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer Advancement Act
K. Congressional Review Act
L. Judicial Review

I. Background

On July 18, 1997, EPA issued new standards for the 8-hour ozone and particulate matter (PM) NAAQS. For ozone, EPA revised the NAAQS by adding an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). For the PM NAAQS, EPA added a new 24-hour standard and a new annual standard for PM2.5.

Section 110(a)(1) of the CAA requires States to submit new SIPs that provide for the implementation, maintenance, and enforcement 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) lists the elements that such new SIPs must address, including section 110(a)(2)(D)(i) which applies to interstate transport of certain emissions. 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.

For the 8-hour ozone standard and the PM2.5 standards, States should already have submitted SIPs that satisfied the section 110(a)(2)(D)(i) requirement related to interstate transport for these new NAAQS. At present, States have not submitted plans to satisfy this requirement, and EPA is today making a finding of failure to submit. This finding starts a 2-year clock for promulgation by EPA of a FIP, in accordance with section 110(c)(1), for any State that does not submit a SIP meeting the requirements of section 110(a)(2)(D)(i) for the PM2.5 and 8-hour ozone NAAQS. This action does not start a sanctions clock pursuant to section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) and because this action is not a SIP Call pursuant to section 110(k)(5).

II. Today's Action

By today's action, EPA is making the finding that States have failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 8-hour ozone and PM2.5 NAAQS. This finding starts a 2-year clock for the promulgation by EPA of a FIP, unless each State submits a SIP to satisfy the section 110(a)(2)(D)(i) requirements, and EPA approves such submission prior to that time. Today's action will be effective on May 25, 2005.

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedures Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to 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 date.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, a determination has been made that this rule is not a ''significant regulatory action'' because none of the above factors apply. As such, this final action was not formally submitted to The Office of Management and Budget (OMB) for review.

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.* This rule relates to the requirement in the CAA for States to submit SIPs under section 110(a)(1) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 8-hour ozone and the PM2.5 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 rule does not establish any new information collection requirement apart from that 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 Code of Federal Regulations (CFR) are listed in 40 CFR part 9.

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 Administrative Procedures Act (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 today's final rule 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 (D.C. 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 today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. 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.

Today's action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the PM2.5 and 8-hour ozone NAAQS (62 FR 38652; 62 FR 38856, July 18, 1997). Therefore, no UMRA analysis is needed. This rule responds to the requirement in the CAA for States to submit SIPs under section 110(a)(1) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 8-hour ozone and PM2.5 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.

Inasmuch as this action simply finds that States have failed to submit SIPs to address a pre-existing statutory requirement under the CAA, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year. However, EPA notes, that in another final rule signed today (the Clean Air Interstate Rule or CAIR), EPA is making findings of significant contribution for many States and requiring the submission of SIPs that will control sulfur dioxide and nitrogen oxide emissions in order to eliminate

interstate transport and that EPA has estimated in that action that such controls will have annual costs of $1.91 billion in 2010 and $2.56 billion in 2015, assuming a 3 percent discount rate. The EPA plans to issue separate guidance concerning compliance with section 110(a)(2)(D)(i) for States other than those subject to the CAIR.

F. 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 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.

G. 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)(1) to satisfy certain elements required under section 110(a)(2) of the CAA for the 8-hour ozone and PM2.5 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 8-hour ozone or the fine particle NAAQS at this time. 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. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the PM2.5 and the 8-hour ozone NAAQS on children. The results of this risk assessment are contained in the NAAQS for PM2.5 and 8-hour Ozone Standard, Final Rule [(62 FR 38652) and (62 FR 38856), July 18, 1997].

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

This rule is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and the Implementation Framework for the PM2.5 NAAQS, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., April 24, 2003.

J. 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. Voluntary consensus standards 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 EPA 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.

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. The 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**.

L. 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 related to the section 110(a)(2)(D)(i) requirements related to the 8-hour ozone and the PM2.5 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 the finding of failure to submit related to section 110(a)(2)(D)(i) 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 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 D.C. Circuit.

Thus, any petitions for review of this action related to a findings of failure to submit related to the requirements of section 110(a)(2)(D)(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

Air pollution control.

Dated: March 10, 2005.

Stephen L. Johnson,

Acting EPA Administrator.

[FR Doc. 05–5319 Filed 4–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–01; FRL–7900–3]

Revision to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from open outdoor burning and from incinerator burning. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 24, 2005 without further notice, unless EPA receives adverse comments by May 25, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–01, by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

3. E-mail: *steckel.andrew@epa.gov*.

4. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are ''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What Rules Did the State Submit?
B. Are There Other Versions of These Rules?
C. What Are the Purposes of the Submitted Rule Revisions?
II. EPA's Evaluation and Action
A. How Is EPA Evaluating the Rule and Rule Revisions?
B. Do the Rule Revisions Meet the Evaluation Criteria?
C. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules and dates that MBUAPCD and SJVUAPCD revised the local rules and when they were submitted to EPA by the California Air Resources Board (CARB).