

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1781 is amended by adding paragraph (g), to read as follows:

§ 52.1781 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(g) *Disapproval.* EPA is disapproving portions of North Carolina's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

[FR Doc. 2011-18000 Filed 7-19-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R09-OAR-2011-0046; FRL-9318-1]

Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements*Correction*

In rule document 2011-14480 appearing on pages 34872-34876, in the issue of Wednesday, June 15, 2011, make the following correction:

On page number 34872, in the second column, in the Environmental Protection Agency document, the subject is corrected to appear as above.

[FR Doc. C1-2011-14480 Filed 7-19-11; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2009-0805; FRL-9435-8]

Approval of Air Quality Implementation Plans; Indiana and Ohio; Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), EPA is taking final action to disapprove the

portions of submittals by the Indiana Department of Environmental Management (IDEM) and the Ohio Environmental Protection Agency (Ohio EPA) that pertain to requirements in the CAA to address interstate transport for the 2006 24-hour fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). EPA is not, however, currently taking action on the remainder of the State Implementation Plan (SIP) submittals from IDEM and Ohio EPA concerning other basic or "Infrastructure" elements required under the CAA. The proposed rule associated with this final action was published on February 4, 2011. The effect of this action will be an obligation for EPA to promulgate a Federal Implementation Plan (FIP) for Indiana and Ohio no later than two years from the date of disapproval. The Transport Rule, when final, is the FIP that EPA intends to implement for Indiana and Ohio.

DATES: This final rule is effective on August 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0805. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

II. What is our response to comments received on the notice of proposed rulemaking?

III. What action is EPA taking?

IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Section 110(a)(1) of the CAA requires states to submit basic or "Infrastructure" SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. As provided by section 110(k)(2) of the CAA, within twelve months of a determination that a submitted SIP is complete under 110(k)(1) of the CAA, the Administrator shall act on the plan. As authorized in section 110(k)(3) of the CAA, where portions of the state submittals are severable, within that twelve-month period EPA may approve the portions of the submittals that meet the requirements of the CAA, take no action on certain portions of the submittals, and disapprove the portions of the submittals that do not meet the requirements of the CAA. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the CAA.

Section 110(a)(2) of the CAA lists the elements that such new Infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions, also known as the CAA "good neighbor" provisions.

On December 18, 2006, EPA revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³ (see, 71 FR 61144).¹ On September 25, 2009, EPA issued its "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)" (2009 Guidance). EPA developed the 2009 Guidance for States making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour PM_{2.5} NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the

¹ The rule for the revised PM_{2.5} NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour PM_{2.5} NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2009 Guidance, EPA indicated that SIP submissions from states pertaining to the “significant contribution” and “interfere with maintenance” requirements of section 110(a)(2)(D)(i) should contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA further indicated that the state’s submission should explain whether or not emissions from the state have this impact and, if so, address the impact. EPA stated that the state’s conclusion should be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the state SIP submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Furthermore, EPA indicated that states should address the “interfere with maintenance” requirement independently, which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour PM_{2.5} NAAQS, not merely areas designated nonattainment. Lastly, in the 2009 Guidance, EPA stated that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with the section 110(a)(2)(D)(i) requirements for the 2006 24-hour PM_{2.5} NAAQS because CAIR does not address this NAAQS.

EPA promulgated CAIR on May 12, 2005 (see, 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for PM_{2.5} and/or ozone in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another state with

respect to the 1997 ozone and PM_{2.5} NAAQS. Many states adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. 2008). However, in response to EPA’s petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008). The Court thereby left CAIR in place in order to “temporarily preserve the environmental values covered by CAIR” until EPA replaces it with a rule consistent with the Court’s opinion. *Id.* at 1178. The Court directed EPA to “remedy CAIR’s flaws” consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone” (Transport Rule).² As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a state must not “significantly contribute to nonattainment” and “interfere with maintenance” of the 2006 24-hour PM_{2.5} NAAQS by other states. The modeling performed for the final Transport Rule shows that both Indiana and Ohio significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas.³

IDEM and Ohio EPA made submittals on October 20, 2009, and September 4, 2009, respectively, that were intended to demonstrate satisfaction of all Infrastructure SIP elements for the 2006 24-hour PM_{2.5} NAAQS. Both States relied predominantly on their respective EPA-approved CAIR regulations to meet the interstate transport requirements of

section 110(a)(2)(D)(i)(I). Indiana further committed to amend its rule once the Federal CAIR is amended or replaced.

II. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA’s proposal to disapprove the portions of the submittals from Indiana and Ohio addressing the requirements of section 110(a)(2)(D)(i)(I) closed on March 7, 2011. Indiana and Ohio each submitted a comment letter to EPA, and a synopsis of their comments, as well as EPA’s response to each comment, is discussed below.

Comment 1: EPA fails to recognize that Indiana was one of a few states that submitted its Infrastructure SIP, and wrongly implies the State was negligent in addressing its CAA requirements. EPA cannot disapprove Indiana’s SIP primarily for its reliance on CAIR. There is no way for Indiana or Ohio to cure EPA’s failure to have all of the underlying Federal requirements in place for the states to meet the transport provision requirements for section 110(a)(2)(D). Although Indiana understands that the CAIR program cannot be defined as permanent and enforceable for SIP purposes, the Transport Rule is not yet final, and was not proposed until after the Infrastructure SIP deadline. Therefore, Indiana believes its Infrastructure SIP is adequate and contains provisions to address all requirements of Section 110(a)(2)(D). CAIR was the only option states could rely upon at the time the SIPs were due, and Indiana made it clear within its submittal that it would adopt the requirements of the replacement rule for CAIR in a timely manner.

Response 1: EPA recognizes the State’s timely efforts in submitting its Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS. However, as outlined in EPA’s proposed action, Indiana’s portion of the Infrastructure SIP in addressing section 110(a)(2)(D)(i)(I) is inadequate and must therefore be disapproved.

States were provided with the 2009 Guidance detailing the required elements of an approvable Infrastructure SIP. Specific to the requirements of section 110(a)(2)(D)(i)(I), EPA indicated in the 2009 Guidance that a state’s submittal should contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA further indicated that the state’s submission should explain

² See “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule,” 75 FR 45210 (August 2, 2010).

³ The modeling for the final Transport Rule can be found as technical support documents in the docket folder for this action.

whether or not emissions from the state have this impact and, if so, address the impact. EPA stated that the state's conclusion should be supported by an adequate technical analysis. IDEM did not provide a technical analysis in its submittal, but instead relied primarily on its approved CAIR regulations to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS. In the proposed rulemaking, EPA provided rationale for why other programs already implemented, and cited by Indiana in its October 20, 2009 submittal, e.g., the NO_x SIP Call, stack height requirements, and acid deposition control regulations, are not sufficient to meet the requirements of section 110(a)(2)(D)(i)(I).

CAIR was promulgated before the 24-hour PM_{2.5} NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 24-hour PM_{2.5} NAAQS.⁴ Thus, as EPA's 2009 Guidance explicitly notes, states cannot rely on CAIR to comply with section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. Furthermore, SIPs can only rely on permanent emissions reductions, and because the Transport Rule in its final form will simultaneously replace and "remedy CAIR's flaws," CAIR will not provide permanent emissions reductions. In conclusion, the portions of Indiana's submittal addressing the requirements of section 110(a)(2)(D)(i)(I) are inadequate, and cannot be approved.

Contrary to Indiana's assertion, CAIR was not the only option states could rely upon at the time Infrastructure SIPs were due. As reflected in the 2009 Guidance, CAIR did not address the 2006 24-hour PM_{2.5} NAAQS obligating states under CAA section 110(a)(2)(D)(i)(I) to make the appropriate demonstration. However, the 2009 Guidance did explain the type of technical analysis and justification necessary to make that demonstration. Indiana did not provide any technical analysis or justification in its October 20, 2009 submittal to support any such demonstration.

Comment 2: EPA should provide Indiana the opportunity to revise its Infrastructure SIP once the Transport Rule is completed, especially since there is no court-ordered deadline for

EPA to act on this particular SIP submittal.

Response 2: EPA is taking action to disapprove the portions of Indiana's Infrastructure SIP submittal addressing the requirements of section 110(a)(2)(D)(i)(I) under section 110(k)(2) and (3) of the CAA. This section of the CAA requires EPA to approve or disapprove a SIP within 12 months of its completeness determination. Under section 110(k), EPA was required to disapprove or approve Indiana's Infrastructure SIP by April 20, 2011. Indiana has an opportunity to revise and submit a SIP at any time and is invited to do so following final promulgation of the Transport Rule and within the time provided by the CAA.

Comment 3: EPA was not timely in developing the Transport Rule, which states expected to use when addressing the interstate transport requirements of the 2006 24-hour PM_{2.5} NAAQS. Therefore, states' Infrastructure SIPs should not be disapproved at this time. Instead, EPA should delay action on the Infrastructure SIPs until states can revise them once the Transport Rule is finalized. EPA also stated that Indiana had failed to provide a modeling analysis. Did EPA expect an analysis from States when States knew that the proposed Transport Rule would adequately address the 2006 24-hour PM_{2.5} NAAQS? Why would Indiana, or any other State, do modeling or rulemaking in advance of the Transport Rule being proposed?

Response 3: States must meet their statutory requirements by submitting SIPs with permanent and enforceable measures in a timely manner. Furthermore, all required documents and technical analyses should accompany the submittals. Lastly, as discussed in Response 2, above, section 110(k)(2) and (3) required EPA to disapprove or approve Indiana's Infrastructure SIP by April 2011.

Comment 4: Indiana disagrees with EPA's approach to address Section 110(a)(2)(D) requirements by way of a FIP. A FIP will allow expedient implementation of emission reductions; however, many states prefer to develop SIPs to better fit their needs. A FIP is also contrary to the spirit of the CAA by unnecessarily limiting state authority. When the Transport Rule is finalized, Indiana will be issued a FIP by EPA for failing to develop an adequate Infrastructure SIP—a requirement that Indiana has already fulfilled. Indiana plans to incorporate the Transport Rule into a state rule and replace the transport component of section 110(a)(2)(D) as expeditiously as possible, and does not believe that EPA

needs to FIP Indiana in order for this action to occur in a timely manner.

Response 4: In this action, EPA is disapproving only the portions of Indiana's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS that address the requirements of section 110(a)(2)(D)(i)(I). Upon disapproval of Indiana's submittal, EPA has a legal obligation, pursuant to the CAA, to promulgate a FIP. See Section 110(c)(1)(B) of the CAA. Section 110(a)(1) of the CAA requires states to submit SIPs that meet certain requirements within three years of promulgation of a NAAQS. These SIPs are required to contain, among other things, adequate provisions "prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard." Section 110(a)(1) gives the Administrator authority to prescribe a period shorter than three years for the states to adopt and submit such SIPs, but does not give the Administrator authority to lengthen the time allowed for submission.

Section 110(c)(1) of the Act, in turn, requires EPA to promulgate FIPs if EPA has found that the state has failed to make a required submission or if EPA has disapproved a state submission or found it to be incomplete. Specifically, section 110(c)(1) requires EPA to promulgate a FIP within two years after the Administrator "(A) finds that a state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section or (B) disapproves a state implementation plan submission in whole or in part." The CAA uses mandatory language, finding that EPA *shall* promulgate a FIP at any time within 2 years after the actions identified 110(c)(1)(A) or 110(c)(1)(B) have occurred. EPA's legal obligation to promulgate FIPs arises when those actions occur without regard to the underlying reason for the underlying SIP deficiency. The obligation to promulgate a FIP must be discharged by EPA unless two conditions are met: (1) The state corrects the deficiency; and (2) the Administrator approves the plan or plan revision, before the Administrator promulgates the FIP.

Under this statutory scheme, EPA has authority and an obligation to

⁴ Further, as explained above and in the Transport Rule proposal, 75 FR 45210 (August 2, 2010), the DC Circuit in *North Carolina v. EPA* found that EPA's quantification of States' significant contribution and interference with maintenance in CAIR was improper, and remanded the rule to EPA. CAIR remains in effect only temporarily.

promulgate a FIP to correct a SIP deficiency if the actions identified in section 110(c)(1)(A) or (B) have been taken, and the two conditions identified in 110(c)(1) have not been met. The question of whether EPA has authority to promulgate any particular FIP, therefore, must be considered on a state specific basis.

EPA disagrees with Indiana's suggestion that the rule is inconsistent with the CAA because it does not give states time to develop, submit and receive EPA approval of SIPs before the FIP goes into effect. Section 110(a)(2) calls on states to submit SIPs that contain adequate provisions prohibiting the emissions proscribed by section 110(a)(2)(D)(i)(I). However, when EPA has not received such SIP submission or has disapproved a SIP submission, it has an obligation created by section 110(c)(1) to promulgate a FIP that meets the requirements of section 110(a)(2)(D)(i)(I). EPA does not believe it has authority to adjust the deadlines established in the Act in order to give states additional time, after promulgation of the Transport Rule, to submit SIPs that comply with section 110(a)(2)(D)(i)(I). Furthermore, EPA does not believe it has authority to alter the statutory requirement that it promulgate FIPs within two years of making a finding of failure to submit. EPA sought to discharge this duty with respect to the states covered by CAIR for the PM_{2.5} NAAQS by promulgating the CAIR; however, the Court found that rule unlawful and not sufficiently related to the statutory mandate of section 110(a)(2)(D)(i)(I). For this reason, EPA does not believe it could argue that the CAIR FIPs completely discharged its duty to promulgate FIPs with respect to the states whose section 110(a)(2)(D)(i)(I) SIPs are disapproved.

EPA is following the SIP process established in the statute. The 110(a) SIPs for the 2006 24-hour PM_{2.5} NAAQS were due in 2009. In each case, states were given the full 3 years to meet the requirement. The Transport Rule, when final, will provide the FIP to fulfill the requirement that was unmet by the states through SIPs. EPA is required to promulgate a FIP within two years of a state's failure to have an approved SIP. States were in fact given the first chance to fulfill the requirement of Section 100(a)(2)(D)(i)(I). EPA's action is subsequent to the State's opportunity to first fulfill the requirement.

EPA has made every attempt to facilitate the transition between the requirements of CAIR and those of the Transport Rule. For future requirements, EPA will also make every effort to address transition issues. However, EPA

cannot ignore its statutory obligations and therefore cannot ensure that no new requirements will be placed on the sources being regulated by this action. Every time a NAAQS is revised, there is a statutory obligation for states to submit SIPs to address certain CAA requirements. If states fail to meet the deadlines or submit incomplete or inadequate SIPs, EPA must act to ensure that the requirements are put into place.

Even though EPA is planning to promulgate a FIP, the State still has the opportunity to submit a SIP that can tailor requirements to the specific needs and concerns of the State in order to meet the applicable state budgets. Prior to this action, states had ample time under the provisions of the CAA to develop and submit approvable SIPs and did not. No state affected by the Transport Rule has submitted a SIP to replace the emission reductions that were required by CAIR, despite the *North Carolina* opinion issued in December 2008 that clearly stated that CAIR did not adequately address 110(a)(2)(D)(i)(I). While the remand left CAIR in place, resulting in the continued requirement that states and sources comply with it, states had the opportunity to develop replacement measures to ensure that 110(a)(2)(D)(i)(I) components of their SIPs would continue to be fulfilled in the future.

Comment 5: Indiana has met the 2006 24-hour PM_{2.5} NAAQS since the end of 2007 and monitoring values continue to trend downward. Indiana does not significantly contribute to violations of the annual standard in downwind areas. Therefore, Indiana does not contribute to any violations of the 2006 24-hour PM_{2.5} NAAQS. EPA had not conducted a complete analysis on the contributions at the time the Infrastructure SIPs were due, nor did EPA give states a chance to provide comments on the analysis.

Response 5: As discussed in the proposed disapproval, the modeling performed for the proposed Transport Rule shows that Indiana significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas. EPA has now completed the modeling for the final Transport Rule and, as indicated by the technical support documents for this action, Indiana in fact contributes to downwind nonattainment in another state or interferes with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

Comment 6: Modeling for the Transport Rule was based on the 1997 annual PM_{2.5} NAAQS, not the 2006 24-hour PM_{2.5} NAAQS. Also, the base years used in the modeling are not reflective of emissions or monitoring data which

show downward trends in more recent years that include benefits from CAIR.

Response 6: The modeling performed by EPA for the final Transport Rule addresses both the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS. CAIR cannot be included in the analysis since it does not provide permanent emission reductions nor address the 2006 24-hour PM_{2.5} NAAQS.

Comment 7: If EPA proceeds with its disapproval, and Indiana is not permitted to revise its Infrastructure SIP once the Transport Rule is finalized, EPA should properly characterize the circumstances surrounding its need to disapprove the submittal.

Response 7: The circumstances surrounding EPA's need to disapprove the portions of Indiana's Infrastructure SIP submittal for the 2006 24-hour PM_{2.5} NAAQS that address the requirements of section 110(a)(2)(D)(i)(I) were discussed in the proposed disapproval. Additionally, Response 1, Response 3, and Response 4, above, reiterate the circumstances surrounding EPA's need to disapprove the portion of Indiana's Infrastructure SIP submittal for the 2006 24-hour PM_{2.5} NAAQS that address the requirements of section 110(a)(2)(D)(i)(I). Indiana has an opportunity to revise and submit a SIP at any time, and is invited to do so following final promulgation of the Transport Rule and within the time provided by the CAA.

Response 8: EPA fails to acknowledge states' efforts to meet their requirements on a timely basis. EPA should approve Ohio's transport component of the Infrastructure SIP since the State submitted its SIP on time and in accordance with available guidance.

Response 9: EPA recognizes Ohio's timely efforts in submitting its Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS. However, in a similar manner as described above in the response to Comment 1, above, the portions of Ohio's submittal addressing the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS are inadequate, and must be disapproved.

Comment 10: Instead of disapproving the portion of the SIP submittal at this time, EPA can issue a SIP deficiency notice and require a new SIP after the Transport Rule is finalized.

Response 10: EPA disagrees with Ohio's statement. EPA is taking action to disapprove the portions of Ohio's submittal under section 110(k)(2) and (3) of the CAA. Under section 110(k) of the CAA, EPA had an obligation to approve or disapprove Ohio's submittal by March 4, 2011.

Comment 11: EPA believes that it must issue this disapproval to address the transport of emissions and pollution for the 2006 PM_{2.5} NAAQS through a FIP. The better course is to allow the states to develop their own SIP when adopting the Transport Rule.

Response 11: In this action, EPA is disapproving only the portions of Ohio's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS that address the requirements of section 110(a)(2)(D)(i)(I). The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than two years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. Ohio is welcome to submit a revised SIP for EPA approval that addresses the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS after the Transport Rule is finalized, and within the time provided by the CAA.

III. What action is EPA taking?

For the reasons discussed in the proposed rulemaking, EPA is taking final action to disapprove submittals from Indiana and Ohio intended to demonstrate that each respective State has adequately addressed the elements of section 110(a)(2)(D)(i)(I) of the CAA with regard to the 2006 24-hour PM_{2.5} NAAQS. This action pertains only to section 110(a)(2)(D)(i)(I); the States' submittals for the remainder of the 2006 24-hour PM_{2.5} NAAQS Infrastructure SIPs will be addressed in separate rulemakings. The effect of this action will be an obligation for EPA to promulgate a FIP for Indiana and Ohio no later than two years from the date of disapproval. The final Transport Rule is the FIP that EPA currently intends to promulgate for Indiana and Ohio.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy

action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely disapproves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule disapproves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a

state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 28, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

- 2. Section 52.776 is amended by adding paragraph (u), to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(u) *Disapproval.* EPA is disapproving the portions of Indiana's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

Subpart KK—Ohio

- 3. Section 52.1880 is amended by adding paragraph (l), to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(l) *Disapproval.* EPA is disapproving the portions of Ohio's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

[FR Doc. 2011-17739 Filed 7-19-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-HQ-OAR-2011-0338; FRL-9435-7]

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: In this action, EPA is finding that Tennessee has failed to submit a State Implementation Plan (SIP) to satisfy the 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}). Although Tennessee has submitted a SIP to address the requirements, the state subsequently withdrew that portion of its SIP submittal because it relied on the Clean Air Interstate Rule to address transport. This finding creates a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA. In a separate action, commonly referred to as the Transport Rule, EPA is finalizing a FIP for Tennessee to address these requirements.

DATES: The effective date of this rule is August 19, 2011.

FOR FURTHER INFORMATION CONTACT:

General questions concerning this final rule should be addressed to Edgar Mercado, Office of Atmospheric Programs, Clean Air Markets Division, 2400 Pennsylvania Avenue, Mail Code 6204J, Washington, DC 20460; telephone (202) 343-9440; *e-mail address:* mercado.edgar@epa.gov.

SUPPLEMENTARY INFORMATION: For questions related to Tennessee, please contact Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303.

Table of Contents

- I. Background
- II. This Action
- III. Statutory and Executive Order Reviews
 - A. Notice and Comment Under the Administrative Procedures Act (APA)
 - 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
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act
 - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act
 - M. Judicial Review

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 (µg/m³) to 35µg/m³. 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. On June 9, 2010, in a separate final rulemaking (75 FR 32763), EPA found that 29 states and territories had not made a SIP submittal that addressed this requirement. Although Tennessee has submitted a SIP intended to address the Section 110(a)(2)(D)(i) requirements, the state subsequently withdrew the Section 110(a)(2)(D)(i) of its infrastructure SIP with respect to the 2006 24-hour PM_{2.5} NAAQS on December 2, 2010, because it relied on the Clean Air Interstate Rule. Although deficient to address the transport of pollution as highlighted in recent EPA air quality modeling to support the final Transport Rule, EPA acknowledges the State's efforts in making this SIP submittal. In response to Tennessee's withdrawal of the 110(a)(2)(D)(i)(I) portions of its SIP because it relied on the Clean Air Interstate Rule, EPA is making a finding that Tennessee has failed to submit the required infrastructure SIP elements with respect to nonattainment or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS. In accordance with Section 110(c)(1), this finding creates a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA unless, prior to promulgation of a FIP, the state makes a submission to meet and EPA approves such submission as meeting the attainment and