

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2011.

Susan Hedman,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0335; FRL-9294-4]

Approval and Promulgation of Implementation Plans; Texas; Proposed Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA or Act), EPA is proposing to disapprove the portion of the Texas CAA section 110(a)(2) "Infrastructure" State Implementation Plan (SIP) submittal addressing significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 24-hour fine particle (PM_{2.5}) national ambient air quality standards (NAAQS). On November 23, 2009, the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), submitted a SIP to EPA intended to address the requirements of CAA section 110(a)(2) for "infrastructure." In this action, EPA is proposing to disapprove the portion of the Texas' SIP revision submittal that intended to address the section 110(a)(2)(D)(i)(I) requirements prohibiting a state's emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other state. The rationale for the disapproval action of the SIP revision is described in

this proposal. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2011-0335, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA-R06-OAR-2011-0335. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: 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., CBI 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 Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6645; fax number (214) 665-7263; e-mail address young.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

- I. What action is EPA proposing in today's notice?
- II. What is the background for this proposed action?
- III. What is EPA's evaluation of Texas' submittal?
- IV. Statutory and Executive Order Reviews

I. What action is EPA proposing in today's notice?

We are proposing to disapprove a submission from the State of Texas intended to demonstrate that Texas has adequately addressed the elements of CAA section 110(a)(2)(D)(i)(I) that require the State's SIP to contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state. We are proposing to determine that the Texas submission does not contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other downwind states. Any remaining elements of the submittal, including language to address other CAA Section 110(a)(2) elements, are not addressed in this action. EPA is proposing to disapprove only the provisions which relate to the Section 110(a)(2)(D)(i)(I) demonstration for the 2006 PM_{2.5} NAAQS. This action is being taken under section 110 of the CAA.

II. What is the background for this proposed action?

On December 18, 2006, we revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³. Section 110(a)(1) of the CAA requires states to submit infrastructure SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.¹

Section 110(a)(2) 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. On September 25, 2009, we issued our "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). We developed the 2009 Guidance to make recommendations to states for 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 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, we indicated that SIP submissions from States pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i)(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. We 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. We stated that the state's conclusion should be supported by an adequate technical analysis. We 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, we 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, we stated that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour PM_{2.5} NAAQS because CAIR does not address this NAAQS.

We promulgated the 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 CAA 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 8-hour ozone and PM_{2.5} NAAQS. Many states adopted the CAIR provisions and submitted SIPs to us to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

We were 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 Federal Implementation Plans (FIP) in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to our petition for rehearing, the Court issued an order remanding CAIR to us without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until we replace it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed us to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on us for completing that action. *Id.* In order to address the judicial remand of CAIR, we have 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

III. What is EPA's evaluation of Texas' submittal?

On November 23, 2009, the State of Texas, through TCEQ, provided a SIP revision to us intended to address the requirements of Section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS as well as other requirements of Section 110(a)(2). In this rulemaking, we are addressing only the requirements of Section 110(a)(2) that pertain to prohibiting sources in Texas from emitting pollutants that will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other states.

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

¹ The rule for the revised PM_{2.5} NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. The rule was published in the Federal Register on October 17, 2006 and became effective December 18, 2006 (71 FR 61144). Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

In its submission, Texas certified that the State is meeting its Section 110(a)(2)(D)(i)(I) obligations by virtue of its CAIR SIP for PM_{2.5}. Texas specifically said that it submitted a SIP revision to implement CAIR and is currently in the process of revising the CAIR SIP and rule to account for federal rule revisions and state legislative changes.³ Irrespective, CAIR was promulgated before the 24-hour PM_{2.5} NAAQS was revised in 2006, and as mentioned above neither CAIR nor any of the State's revisions to its CAIR program address interstate transport with respect to the 2006 PM_{2.5} NAAQS.⁴ Thus, reliance on CAIR and the State's CAIR SIP provisions cannot be used to comply with Section 110(a)(2)(D)(i)(I) for the respective 2006 PM_{2.5} NAAQS.

We also note that several states in their submission claim that controls planned for or already installed on sources within the state to meet the CAIR provisions satisfied the Section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour PM_{2.5} NAAQS. However, states will not be able to rely permanently upon the emissions reductions predicted by CAIR, because CAIR was remanded to us and will not remain in force permanently. Furthermore, we are in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For these reasons, we would not be able to approve Texas' SIP submission pertaining to the requirements under Section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

Based upon our evaluation, we are proposing that this SIP revision does not meet the requirements of Section 110(a)(2)(D)(i)(I) of the CAA. Therefore, we are proposing to disapprove the portion of the Texas Infrastructure SIP submission intended to demonstrate that its SIP meets the Interstate Transport requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006

PM_{2.5} NAAQS. The portion of the Texas submission that addresses 110(a)(2)(D)(i)(I) is severable from the remainder of the Texas submittal which addresses other elements of 110(a)(2), meaning our disapproval of this element does not impact the other elements of the Texas submission which we will address in separate **Federal Register** actions. Therefore, we are proposing to disapprove only those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the elements and their demonstrations at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call), starts a sanctions clock. The provisions in the submittal we are proposing to disapprove were not submitted to meet either of those requirements. Therefore, if we take final action to disapprove this submittal, no sanctions will be triggered. The full or partial disapproval of a required State Implementation Plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 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. In our Transport Rule proposal we took comment on whether we should include Texas in a FIP for PM_{2.5} (75 FR 45210, 45284). The finalized Transport Rule may serve as the FIP that EPA intends to implement for the State.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

³ On July 30, 2007, we approved as an abbreviated SIP revision for the allowance allocation methodologies for Phase 1 of the CAIR NO_x annual trading program and the Compliance Supplement Pool; see 72 FR 41453. The subsequent SIP revision was submitted to EPA for review in March 4, 2010, and was submitted to address our timing concerns with the Texas allowance allocation methodology for Phase 2 of the CAIR NO_x annual trading program. EPA has not acted on this subsequent SIP revision submittal and is not taking action on it at this time.

⁴ Further, as explained above and in the Transport Rule proposal, 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.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. 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.” EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. 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, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the

state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 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.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: April 5, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–8995 Filed 4–12–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9291–5]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Spiegelberg Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of intent.