



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA-HQ-OAR-2009-0491; FRL-9626-2]

Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone: Effect of Stay of Transport Rule

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Intent.

SUMMARY: A December 30, 2011 order of the U.S. Court of Appeals for the District of Columbia Circuit stayed the Transport Rule, also known as the Cross State Air Pollution Rule.¹ This document sets out EPA's interpretation of the effect of the Court's stay on the federal implementation plans finalized by EPA on December 15, 2011 (SNFR), which included the conclusion that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute

¹ Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States: Final Rule (76 FR 48208, August 8, 2011). Available on the Web at <http://www.epa.gov/crossstaterule>.

to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states and required sources in five states to comply with the Transport Rule's ozone season NO_x trading program.²

DATES: The effective date of this notice of intent is [Insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

I. Background

² EPA did not finalize a FIP for Kansas with respect to the 1997 ozone NAAQS in the SNFR. EPA had previously approved a section 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 PM_{2.5} NAAQS on March 9, 2007 (75 FR 10608), and that SIP submission did not rely on the unlawful CAIR trading programs or on the conclusion that compliance with CAIR was sufficient to satisfy its 110(a)(2)(D)(i)(I) obligations with respect to the 1997 ozone and PM_{2.5} NAAQS. EPA therefore did not have the obligation to promulgate a FIP for Kansas under section 110(c)(1) of the CAA, and instead proposed a SIP Call for Kansas under section 110(k)(5) of the Act (76 FR 763, January 6, 2011). EPA proposed to find Kansas' SIP substantially inadequate to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS based on the proposed conclusion that emissions from Kansas are significantly contributing to nonattainment or interfering with maintenance of the 1997 ozone NAAQS in another state. EPA has not taken final action yet on the proposed SIP Call.

On July 6, 2011, the EPA issued a final rule promulgating the Transport Rule (76 FR 48208, August 8, 2011). The Transport Rule limits the interstate transport of emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) that contribute to harmful levels of fine particulate matter (PM_{2.5}) and ozone in downwind states. The rule identified emissions within 27 states in the eastern United States that significantly affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter NAAQS and the 1997 ozone NAAQS. EPA established trading programs to reduce these emissions through Federal Implementation Plans (FIPs) that regulate electric generating units (EGUs) in the 27 states.

As explained in the preambles to the final Transport Rule (76 FR 48208) and the supplemental notice of final rulemaking (SNFR) (76 FR 80761), EPA updated and improved its modeling platforms and inputs in response to public comments received on the proposed Transport Rule and subsequent Notices of Data Availability (NODAs), and performed other updates. Therefore, some of the results of the analysis performed for the final Transport Rule differed from the results of the analysis conducted for the Transport Rule proposal. Under the proposed Transport Rule, EPA's analysis did not identify Wisconsin, Iowa, and

Missouri as states that significantly contribute to nonattainment and/or interfere with maintenance of the ozone NAAQS in another state with respect to the 1997 ozone NAAQS. Under the final Transport Rule's analysis, however, the results indicated that emissions from these states do interfere with maintenance of the ozone NAAQS of another state. The results also showed that emissions from Missouri significantly contribute to nonattainment of the ozone NAAQS in another state. The analysis for the final rule also identified two ozone maintenance receptors, located in Allegan County, Michigan and Harford County, Maryland, which were not identified by modeling conducted for the proposed rule. The analysis indicated that five states – Iowa, Kansas, Michigan, Oklahoma, and Wisconsin – interfered with maintenance problems at these receptors. EPA did not include these states in the final Transport Rule with respect to the 1997 ozone season NAAQS or finalize ozone season NO_x budgets for these states, but instead published a supplemental notice of proposed rulemaking (SNPR) (76 FR 40662) to provide the public with an opportunity to comment on the conclusion that these states significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in downwind states. EPA finalized the supplemental notice of

proposed rulemaking on December 15, 2011, which was published in the Federal Register on December 27, 2011 (SNFR) (76 FR 80761). The SNFR found that emissions of NO_x from sources in Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin either significantly contributed to nonattainment or interfered with maintenance in downwind states. The SNFR also finalized FIPs for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin that required sources within the states to comply with the Transport Rule.³

After publication of the final Transport Rule, various parties filed petitions for review of EPA's action in the U.S. Court of Appeals for the District of Columbia Circuit (*EME Homer City Generation, L.P. v. EPA*, No. 11-1302 and consolidated cases). On December 30, 2011, upon the motions of various petitioners, the Court ordered the Transport Rule stayed pending the completion of its review.

II. This Notice of Intent

The Court did not explicitly address the effect of its order on the SNFR affecting Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin. Because the underlying programs of the Transport Rule have been stayed by the Court, there is no practical way for covered sources under

³ EPA did not finalize a FIP for Kansas. See *supra* footnote 2.

the SNFR to comply with those programs. The SNFR employs the same methodology, modeling, and analysis as the final Transport Rule and extends the programs established in the Transport Rule to additional states. The agency will therefore treat the new rule in the same manner as the underlying Transport Rule, which has been stayed. EPA does not expect covered sources under the SNFR to comply with the provisions of that rule for the duration of the Court's stay.

Dated: January 26, 2012.

Gina McCarthy
Assistant Administrator.

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