6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0553; FRL–9702-7]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans for Florida, Mississippi, and South Carolina; Clean Air Act Section 110(a)(2)(D)(i)(I) Transport Requirements for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove revisions to the State Implementation Plans (SIPs) for Florida, Mississippi, and South Carolina submitted on September 23, 2009, October 6, 2009 and September 18, 2009, respectively. EPA is proposing to approve the determinations, contained in those submittals, that the existing SIPs for Florida, Mississippi, and South Carolina are adequate to meet the obligation under section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA or Act) to address interstate transport requirements with regard to the 2006 24-hour particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements contained in section 110(a)(2)(D)(i)(I) of the CAA prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. EPA is proposing to approve the States' determinations that their existing SIPs satisfy this requirement and to conclude that additional control measures are not necessary under section 110(a)(2)(D)(i)(I) because emissions from Florida, Mississippi and South Carolina do not contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state. EPA is also proposing to disapprove the SIP submissions from Florida, Mississippi and South Carolina to the extent that they rely on the Clean Air Interstate Rule to meet the 110(a)(2)(D)(i)(I)

requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. Because the Clean Air Interstate Rule has been remanded by the court and did not address the 2006 $PM_{2.5}$ NAAQS, it cannot be relied upon to satisfy any requirements related to that NAAQS. In this action, EPA is only addressing the SIP revisions respecting section 110(a)(2)(D)(i)(I). The SIP revisions respecting the remainder of section 110(a)(2)(D)(i) and sections 110(a)(2)(A)-(M), except for sections 110(a)(2)(C) and 110(a)(2)(I) nonattainment area requirements, are being addressed in separate actions.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0553, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2010-0553," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2012-0553. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website 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 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this proposed action?

A. 2006 24-hour $PM_{2.5}$ infrastructure requirements

On September 21, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. 71 FR 61144 (October 17, 2006). Section 110(a)(1) of the CAA requires states to submit to EPA SIPs that provide for the "implementation, maintenance, and enforcement" of a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[1] Sections 110(a)(1) and (2) require these submissions to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. EPA thus refers to these submissions as "infrastructure" SIPs. States were required to submit such SIPs to EPA no later than September 21, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. SIPs must address the requirements of 110(a)(2), as applicable, including section 110(a)(2)(D)(i)(I), which pertains to interstate transport of certain emissions.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint alleging that EPA had failed to take final action on SIP submittals addressing the "infrastructure" requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to sign for publication in the Federal Register a notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Florida, Mississippi, and South Carolina 2006 24-hour $PM_{2.5}$ NAAQS infrastructure SIP submittals addressing the applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section 110(a)(2)(C) the nonattainment area requirements and the visibility requirements of section 110(a)(2)(D)(i)(II), no later than September 30, 2012.

B. Background on infrastructure actions

[1] The rule establishing 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) "infrastructure" SIP submittals, these submittals were due on September 21, 2009, three years from the September 21, 2006, signature date pursuant to section 110(a)(1) of the CAA. *See* 42 U.S.C. 7410(a)(1).

Section 110(a) imposes the obligation upon states to make infrastructure SIP submissions to EPA for each 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 affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. As a general matter, the infrastructure requirements are listed in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" and September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards." Although all the elements are identified below, today's action pertains only to Section 110(a)(2)(D)(i)(I).

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.

- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and the applicable requirements of part D.[2]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. EPA has previously discussed the scope of such actions in prior infrastructure actions. *See, e.g.,* 76 FR 14631 (March 17, 2011); 76 FR 41123 (July 13, 2011). Because today's action is focused on only the 110(a)(2)(D)(i)(I) infrastructure element, EPA is not repeating its previously articulated discussion on the scope of infrastructure SIP actions; however, such considerations remain applicable here.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such

[2] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards," and the September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[3] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[4] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given

[3] *See Id.*, 70 FR 25162 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[4] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I-X, dated August 15, 2006.

NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans.

C. Transport Rules

EPA has previously addressed the requirements of section 110(a)(2)(D)(i)(I) in past regulatory actions such as the 1998 NOx SIP call, the 2005 Clean Interstate Rule (CAIR), and the 2011 Cross-State Air Pollution Rule (CSAPR), also known as the Transport Rule.[5] In the 1998 NO_x SIP call, EPA evaluated whether or not the ozone-season NO_x emissions in certain states had prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate the NO_x emissions, whether through participation in a regional cap and trade program or by other means. EPA's general approach to section 110(a)(2)(D) in the NO_x SIP call was upheld in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), cert denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the NO_x SIP call was not explicitly reviewed by the court. *See North Carolina* v. *EPA,* 531 F.3d 896, 907-09 (D.C. Cir. 2008).

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR) in the Federal Register. *See* 70 FR 25162. CAIR required States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to nonattainment and interfere with maintenance of the 1997 NAAQS for $PM_{2.5}$ and/or ozone in any downwind state. 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 (D.C. Circuit) issued its decision to vacate and remand both CAIR and the associated CAIR federal implementation plans (FIPs) in their entirety. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Among other things, the Court found that EPA failed to give independent meaning to the term "interfere with maintenance." Subsequently, in response to EPA's petition for rehearing, the Court

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[5] *See* 63 FR 57371 (October 27, 1998), NO_x SIP Call; 70 FR 25172 (May 12, 2005), CAIR; and 76 FR 48208 (August 8, 2011) (Transport Rule, also known as Cross-State Air Pollution Rule or CSAPR).

issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR federal implementation plans (FIPs). *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The Court remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR." *North Carolina v. EPA*, 550 F.3d at 1178.

In order to address the judicial remand of CAIR, EPA promulgated a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), in the eastern United States, the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule (CSAPR)). *See* 76 FR 48208 (August 8, 2011). In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR FIPs for control periods in 2012 and beyond. *See* 76 FR 48321.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the D.C. Circuit stayed the Transport Rule pending the court's resolution of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

II. What is EPA's analysis of Florida's, Mississippi's, and South Carolina's compliance with section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS?

On September 25, 2009, EPA issued a guidance entitled, "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)" (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to provide additional recommendations to states for developing

SIP submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

In the 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from states pertaining to the "significant contribution" and "interfere with maintenance" requirements in section 110(a)(2)(D)(i)(I) must 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. In the Infrastructure Guidance, EPA explained that states could not rely on the CAIR to comply with CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be a challenging task for the affected states, EPA also noted in the 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure Guidance the Agency's intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States (i.e., the Transport Rule). As noted above EPA published the Transport Rule in the Federal Register on August 8, 2011. *See* 76 FR 48208.

On September 23, 2009, October 6, 2009, and September 18, 2009, Florida, Mississippi and South Carolina, respectively, provided EPA with infrastructure submissions certifying that their current SIPs addressed all the required infrastructure elements for the 2006 24-hour $PM_{2.5}$ NAAQS. In these submissions Florida, Mississippi and South Carolina all relied on CAIR to meet section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS. CAIR addressed only the 110(a)(2)(D)(i)(I) requirements with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS and did not address the 2006 $PM_{2.5}$ NAAQS or any requirements related to that NAAQS. In previous actions disapproving SIP revisions for 110(a)(2)(D)(i)(I) that relied on CAIR, EPA explained both its rationale for disapproving those SIP revisions as well as describing a number of considerations for states for providing an adequate demonstration to address interstate transport requirements for the 2006 $PM_{2.5}$ NAAQS. *See, e.g.*, 76 FR 43128 (July 20, 2011); 76 FR 4588 (January 26, 2011). Among the

considerations, EPA explained that the state should explain whether or not emissions from the state contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state, and that such a conclusion should be supported by a technical analysis. As explained in the prior disapprovals, a state may not rely on CAIR to satisfy the requirements of Section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS because CAIR addressed only the 1997 $PM_{2.5}$ and ozone NAAQS and did not address the 2006 $PM_{2.5}$ NAAQS or any requirements related to that NAAQS. In addition, CAIR was found flawed and remanded to EPA by the court. *North Carolina,* 550 F.3d at 1176-1178. Therefore, EPA is proposing to disapprove the States' submission to the extent they rely on CAIR to meet these requirements.

Since receiving these submittals, EPA conducted additional modeling, as part of the Transport Rule. This modeling supports the conclusion that these States' existing implementation plans are adequate to satisfy the requirements of section 110(a)(2)(D)(i)(I). This modeling is consistent with the types of analyses and considerations that EPA recommended states undertake in determining whether their SIPs were adequate to satisfy 110(a)(2)(D)(i)(I). Thus, EPA is now proposing to determine that the SIPs for Florida, Mississippi, and South Carolina are adequate to satisfy the requirements of 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS based on modeling conducted by EPA for the Transport Rule. The Transport Rule air quality modeling technical support document can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2012-0553. Today, EPA is also proposing to disapprove the States' reliance on CAIR to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS, to the extent that this rule is relied upon in the infrastructure submissions.

The air quality modeling conducted for the Transport Rule evaluated interstate contributions from emissions in upwind states to projected future downwind nonattainment and maintenance receptors for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA used air quality thresholds to indentify linkages between upwind states and downwind nonattainment and maintenance receptors. The air quality threshold was

calculated as 1 percent of the NAAQS, which is 0.35 μg/m^3 for 2006 24-hour $PM_{2.5}$ NAAQS. EPA found states with emissions projected to exceed this air quality threshold at one or more downwind nonattainment receptors emissions to be linked to all such receptors. Emissions from states with one or more linkages were subject to further evaluation. EPA did not conduct further evaluation of emissions from states that were not linked to any downwind receptors. The air quality modeling for the Transport Rule did not find emissions from either Florida, Mississippi, or South Carolina linked to any downwind receptors for the 2006 24-hour $PM_{2.5}$ NAAQS. Below is a summary of the air quality modeling results for Florida, Mississippi, and South Carolina. A technical support document explaining the modeling in much greater detail can be found in the docket for this rulemaking.

LARGEST CONTRIBUTION TO DOWNWIND
2006 24-HOUR $PM_{2.5}$ (μg/m^3) NONATTAINMENT AND MAINTENANCE AREAS

State	Largest downwind contribution to nonattainment for 24-hour $PM_{2.5}$ (μg/m^3)	Largest downwind contribution to maintenance for 24-hour $PM_{2.5}$ (μg/m^3)
Florida	0.07	0.03
Mississippi	0.06	0.07
South Carolina	0.29	0.25

EPA believes it is appropriate to rely on this modeling even though the U.S. Court of Appeals for the D.C. Circuit stayed the Transport Rule pending judicial review. The stay of the rule does not, by itself, invalidate the modeling and nothing in the court order staying the rule suggests that it would be improper for EPA to rely on technical modeling conducted during the lengthy rulemaking process. Further, EPA is not proposing to rely on any requirements of the Transport Rule or emission reductions associated with that rule to support its conclusion that these three states have met their 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS.

III. Proposed Action

EPA is proposing to partially approve and partially disapprove revisions to the State Implementation Plans (SIPs) for Florida, Mississippi, and South Carolina submitted on September 23, 2009, October 6, 2009 and September 18, 2009 respectively. EPA is proposing to approve the determinations that the existing SIPs of Florida, Mississippi, and South Carolina have adequate provisions to satisfy the obligation under section 110(a)(2)(D)(i)(I) of the CAA to address interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. EPA proposes to base this action on air quality modeling, conducted by EPA during the rulemaking process for the Transport Rule. Additionally, EPA is proposing to disapprove, the SIP submissions from Florida, Mississippi and South Carolina to the extent they rely on the Clean Air Interstate Rule to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA notes, that once finalized, the partial disapproval will not trigger a FIP for these States so long as today's proposed determination that the requirements of 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS for the Florida, Mississippi and South Carolina SIPs are met, is finalized. No further action will be required on the part of Florida, Mississippi or South Carolina as a result of the proposed partial disapproval because the SIPs themselves are not deficient.

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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications for Florida and Mississippi as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because these SIPs are 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. With regard to South Carolina, EPA notes that, pursuant to

the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, the Catawba Indian Nation Reservation, which is located within the State of South Carolina, is subject to all state and local environmental laws and that South Carolina regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities. Thus, the South Carolina SIP applies to the Catawba Reservation. Nonetheless, EPA has preliminarily determined that today's proposed rule determining that the South Carolina SIP meets the State's obligation under section 110(a)(2)(D)(i)(I) and disapproving its reliance upon CAIR does not have tribal implications as specified by Executive Order 13175 (65 FR 67249). EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law in South Carolina.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator,
Region 4.

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