



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0348; FRL-9813-2

Approval and Promulgation of State Implementation Plans; State of North Dakota; Interstate Transport of Pollution for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve portions of a State Implementation Plan (SIP) submission from the State of North Dakota which demonstrates that its SIP meets certain interstate transport requirements of the Clean Air Act (“Act” or “CAA”) for the 2006 fine particulate matter (“PM_{2.5}”) National Ambient Air Quality Standards (“NAAQS”). This submission addresses the requirement that North Dakota's SIP contain adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is proposing to approve the portion of the North Dakota SIP submission that addresses the CAA requirement prohibiting emissions from North Dakota sources from significantly contributing to nonattainment of the 2006 PM_{2.5} NAAQS in any other state or interfering with maintenance of the 2006 PM_{2.5} NAAQS by any other state.

DATES: Comments must be received on or before [Insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0348, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting

comments.

- E-mail: clark.adam@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2012-0348.

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. For additional instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act.
- (ii) The initials CAIR mean or refer to the Clean Air Interstate Rule.
- (iii) The initials CSAPR mean or refer to the Cross-State Air Pollution Rule.
- (iv) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (v) The initials SIP mean or refer to State Implementation Plan.
- (vi) The words North Dakota and State mean the State of North Dakota.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.

- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. 2006 PM_{2.5} NAAQS and Interstate Transport

Section 110(a)(2)(D)(i) of the CAA specifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants with respect to a new or revised NAAQS. In this action for the State of North Dakota, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 PM_{2.5} NAAQS.¹ The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the applicable NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

B. EPA Rules Addressing Interstate Transport for the 2006 PM_{2.5} NAAQS in the Eastern United States

EPA has addressed the requirements of section 110(a)(2)(D)(i)(I) for many states in the eastern portion of the country in three regulatory actions.² Most recently, EPA published the

¹ This proposed action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We will act on these elements in a separate rulemaking.

² See NO_x SIP Call, 63 FR 57371 (October 27, 1998); CAIR, 70 FR 25172 (May 12, 2005); and Transport Rule or

final Cross State Air Pollution Rule (“CSAPR” or “Transport Rule”) to address the first two elements of section 110(a)(2)(D)(i)(I) in the Eastern United States with respect to the 2006 PM_{2.5} NAAQS, the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). CSAPR was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.³ See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate CSAPR. See *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012). The *EME Homer City* panel also ordered EPA to continue implementing CAIR in the interim. On March 29, 2013, the United States asked the Supreme Court to review the *EME Homer City* decision. In the mean time, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the panel opinion in *EME Homer City*. North Dakota was entirely within the modeling domain for the air quality modeling analyses used in the development of CAIR and CSAPR.

III. North Dakota’s Submittal

On August 12, 2010, the North Dakota Department of Health (NDDH) made a submission certifying that North Dakota’s SIP is adequate to implement the 2006 PM_{2.5} NAAQS for all the “infrastructure” requirements of CAA section 110(a)(2). This submission included a transport analysis to support the conclusion that North Dakota’s SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.⁴

North Dakota’s PM_{2.5} transport analysis contains the State’s assessment of the potential

Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

³ CAIR addressed the 1997 annual and 24-hour PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM_{2.5} NAAQS. For more information on CAIR, please see our July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 PM_{2.5} NAAQS (77 FR 44551, 44552).

⁴ NDDH’s submission, dated August 12, 2010 is included in the docket for this action.

for emissions of PM_{2.5} and PM_{2.5} precursors from North Dakota sources to significantly contribute to nonattainment or interfere with maintenance of the 24-hour PM_{2.5} standards in any other state. In its analysis, the State considered distance, wind direction, monitor values in North Dakota and other states, modeling by the Western Regional Air Partnership of contribution to Class I Areas, and anticipated future PM_{2.5} emission reductions.

IV. EPA's Evaluation

A. EPA's Approach for Evaluating Interstate Transport of Air Pollution

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA first determines whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If a state is determined not to have such contribution or interference, then section 110(a)(2)(D)(i)(I) does not require any changes to a SIP. EPA is proposing to determine that the existing SIP for North Dakota is adequate to satisfy the requirements of 110(a)(2)(D)(i)(I) of the CAA to address interstate transport requirements with regard to the 2006 PM_{2.5} NAAQS. This proposed conclusion is based on air quality modeling originally conducted by EPA during the rulemaking process for CSAPR. This modeling quantified, for each individual state within the modeling domain (including North Dakota), contributions to downwind nonattainment and maintenance areas.

In the CSAPR rulemaking (proposal and final) process, EPA explained how nonattainment and maintenance "receptors" would be identified so that contribution to nonattainment and interference with maintenance could be assessed with respect to those receptors.⁵ The receptors were identified as all monitoring sites that had PM_{2.5} design values

⁵ For our definition of both nonattainment and maintenance receptors, see the Technical Support Documents for the final CSAPR, including the "Technical Support Document (TSD) for the Transport Rule – Air Quality Modeling",

above the level of the 2006 24-hour PM_{2.5} NAAQS (35 µg/m³) for certain analytic years. Then EPA compiled an emissions inventory for the year 2005, the most recent year for which EPA had a complete national inventory at that time. In the CSAPR analysis, EPA also projected the inventory for a future year analysis for evaluating the interstate transport impacts in that future year.⁶ The air quality modeling conducted for CSAPR then evaluated interstate contributions from emissions in upwind states to downwind nonattainment and maintenance receptors for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Please see the Air Quality Modeling Final Rule Technical Support Document, June 2011 (“Air Quality Modeling TSD”) for the CSAPR. Appendix D of this TSD details North Dakota’s contribution data for the 2006 24-hour PM_{2.5} NAAQS for all downwind receptors.

EPA then used air quality thresholds to identify linkages between upwind states and downwind nonattainment and maintenance receptors. As detailed in EPA’s Air Quality Modeling TSD, EPA used a threshold of 1% of the NAAQS to identify these linkages. Our analysis for CSAPR found that the 1% threshold captures a high percentage of the total pollution transport affecting downwind states for PM_{2.5}.⁷ The air quality thresholds were therefore calculated as 1% of the NAAQS, which is 0.35 µg/m³ for the 2006 24-hour PM_{2.5} NAAQS. EPA found states projected to exceed this air quality threshold at one or more downwind nonattainment receptors emissions to be linked to all such receptors, and therefore subject to further evaluation. EPA did not conduct further evaluation of emissions from states that were not linked to any downwind receptors.

(the proposal TSD) June 2010, and the “Air Quality Modeling Final Rule Technical Support Document”, (Air Quality Modeling TSD) June 2011, in the docket for this action.

⁶ See *Id.*; Emissions Inventory Final Rule TSD, June 28, 2011.

⁷ See section IV.F (Analysis of Contributions Captured by Various Thresholds) of the Air Quality Modeling TSD.

The methodology and modeling used to analyze the impact of emissions from North Dakota and to identify potential linkages between North Dakota and downwind nonattainment and maintenance receptors with respect to the 1997 and 2006 PM_{2.5} NAAQS is described in further detail in the Air Quality Modeling TSDs. These documents can be found in the electronic docket for this action, which is available through the *www.regulations.gov* website.

B. EPA's Evaluation of North Dakota's Submittal

In its submittal, North Dakota relied on factors we have generally found to be relevant for assessing interstate transport for western states that were not within the modeling domain for CSAPR.⁸ However, North Dakota was within the modeling domain for CSAPR. As we consider the modeling conducted during the development of CSAPR to contain the most accurate and comprehensive technical assessment of PM_{2.5} interstate transport for those states within its modeling domain, including North Dakota, we examined that analysis to assess transport of PM_{2.5} emissions from North Dakota to other states.

The air quality modeling performed during the development of CSAPR found that the impact from North Dakota emissions on both downwind nonattainment and maintenance receptors was less than the 1% threshold for the 2006 PM_{2.5} NAAQS. EPA therefore did not find emissions from North Dakota linked to any downwind nonattainment or maintenance receptors for the 2006 24-hour PM_{2.5} NAAQS.

Below is a summary of the air quality modeling results for North Dakota from Table IV-9 of EPA's Air Quality Modeling TSD regarding North Dakota's largest contribution to both

⁸ See Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards," August 15, 2006, available at http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di_sip_guidance.pdf.

downwind PM_{2.5} nonattainment and maintenance areas.

NORTH DAKOTA’S LARGEST CONTRIBUTION TO DOWNWIND PM_{2.5} NONATTAINMENT AND MAINTENANCE AREAS

NAAQS	Air Quality Threshold (µg/m ³)	Largest downwind contribution to nonattainment (µg/m ³)	Largest downwind contribution to maintenance (µg/m ³)
2006 24-hour PM _{2.5} NAAQS (35 µg/m ³)	0.35	0.21	0.33

Based on this analysis, we propose to approve North Dakota’s submission certifying that its SIP meets the requirements of section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS. We continue to believe it is appropriate to rely on the modeling done during the development of CSAPR, even with the *EME Homer City* opinion vacating the rule. *EME Homer City Generation L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). Nothing in the *EME Homer City* opinion suggests that the air quality modeling on which our proposal relies is flawed or invalid for any reason. In addition, nothing in that opinion undermines or calls into question our proposed conclusion that, because emissions from North Dakota do not contribute more than 1% of the 1997 and 2006 PM_{2.5} NAAQS to any downwind area with nonattainment or maintenance problems, North Dakota does not contribute significantly to nonattainment or interfere with maintenance in another state for these NAAQS. Further, EPA is not proposing to rely on any requirements of CSAPR or emission reductions associated with that rule to support its conclusion that North Dakota has met its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 PM_{2.5} NAAQS.

V. Proposed Action

EPA is proposing to approve the 110(a)(2)(D)(i)(I) portion of North Dakota’s August 12, 2010 SIP submission, based on conclusions drawn from the technical analysis done during the

development of CSAPR that emissions from North Dakota sources do not contribute significantly to nonattainment of the 2006 24-hour PM_{2.5} NAAQS in any other state or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS by any other state. Accordingly, we propose to conclude that the existing SIP is adequate to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS, and that additional control measures in North Dakota are not necessary for this purpose.

VI. 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 USC 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 action merely proposes to approve some 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 USC 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 USC 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 USC 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 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, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: May 2, 2013

Howard M. Cantor
Acting Regional Administrator,
Region 8.

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