



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0969; EPA-R05-OAR-2014-0704;

FRL-9943-76-Region 5]

Indiana; Ohio; Wisconsin; Disapproval of Interstate Transport

Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove elements of State Implementation Plan (SIP) submissions from Indiana and Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS), and to partially approve and partially disapprove elements of the SIP submission from Wisconsin addressing the same requirements. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions. Ohio, Indiana, and Wisconsin made SIP submissions that, among other things, certified that their existing SIPs were sufficient to

meet the interstate transport infrastructure SIP requirements for the 2008 ozone NAAQS. EPA is proposing to disapprove portions of submissions from Indiana and Ohio, and to partially approve and partially disapprove a portion of Wisconsin's submission addressing these requirements.

DATES: Comments on this proposed rule 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-R05-OAR-2011-0969 (Indiana and Ohio) and EPA-R05-OAR-2014-0704 (Wisconsin) at <http://www.regulations.gov> or via email to Aburano.Douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the

web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

- I. Background.
- II. EPA's review.
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. Background.

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in three infrastructure SIP submissions addressing the applicable infrastructure requirements with respect to the 2008 ozone NAAQS: a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM), clarified

in a May 24, 2012, letter; a December 27, 2012, submission from the Ohio Environmental Protection Agency (Ohio EPA); and a June 20, 2013, submission from the Wisconsin Department of Natural Resources (WDNR), clarified in a January 28, 2015, letter.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "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 these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA commonly refers to such state plans as "infrastructure SIPs."

This rulemaking proposes action on three CAA section 110(a)(2)(D)(i) requirements of these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS ("prong one"), or interfering with

maintenance of the NAAQS ("prong two"), by any another state. Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality ("prong three") and to protect visibility ("prong four") in another state. This rulemaking addresses prongs one, two, and four of this CAA section. The majority of the other infrastructure elements were approved in rulemakings on April 29, 2015 (80 FR 23713) for Indiana; October 16, 2014 (79 FR 62019) for Ohio; and September 11, 2015 (80 FR 54725) for Wisconsin.

II. EPA's review.

On September 13, 2013, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)" (2013 Guidance). This guidance provides, among other things, recommendations on the development of infrastructure SIPs for the 2008 ozone NAAQS.¹ As noted in the 2013 Guidance, pursuant to CAA section 110(a),

¹ The 2013 Guidance does not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I) requirements—i.e., prongs one and two. EPA issued the Guidance shortly after the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012), which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by that ongoing litigation, EPA elected at the time to not provide additional guidance on those requirements. As guidance is neither binding, nor required by statute, whether EPA's elects to provide guidance on a particular section has no impact on a state's CAA obligations.

states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. IDEM, Ohio EPA, and WDNR provided public comment opportunities on their SIP submissions. In this action of proposed rulemaking, EPA is also soliciting comment on our evaluation of each state's infrastructure SIP submission. The states summarized how various components of their SIPs met each of the applicable requirements in section 110(a)(2) for the 2008 ozone NAAQS, as applicable. The following review evaluates only the state's submissions for three CAA section 110(a)(2)(D)(i) requirements.

A. Section 110(a)(2)(D)(i)(I) - prongs one and two

IDEM's submission addressing the prong one and two requirements states that it is currently "in the process of promulgating rules" to implement EPA's 2011 Cross-State Air Pollution Rule (CSAPR). IDEM noted, however, that at the time of its submission CSAPR was being implemented pursuant to a Federal Implementation Plan (FIP). IDEM did not cite any additional rules or regulations controlling emissions from the state or otherwise provide any additional analysis regarding the impacts of emissions from sources in Indiana on air quality in other states with respect to the 2008 ozone NAAQS.

Ohio EPA's submission cited various state rules related generally to interstate transport of pollutants including rules concerning stack height requirements, acid rain permits and

compliance, the nitrogen oxide budget trading program, the Clean Air Interstate Rule (CAIR), and the Clean Air Mercury Rule.

Ohio EPA also noted EPA's development of CAIR and regional haze programs that help address interstate transport. Finally, Ohio EPA noted that it has "responded to requests" from Indiana and West Virginia to ameliorate interstate transport by revising state rules applicable to Hamilton and Jefferson Counties. Ohio EPA did not provide any additional analysis regarding the impacts of emissions from sources in Ohio on air quality in other states with respect to the 2008 ozone NAAQS, particularly as to whether the state rules identified in its submission are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

WDNR's submission states that the Wisconsin SIP implements the state portions of CAIR as a means of addressing the interstate transport of ozone precursors, and that current state and regional controls are sufficient to meet the state's transport obligations. WDNR also noted that it has "the authority to develop" additional control requirements once the EPA complies with the D.C. Circuit's opinion in *EME Homer City Generation v. EPA*, 696 F.3d 7 (2012), instructing EPA to quantify each state's significant contribution to air quality problems in other states before requiring states to submit SIPs

addressing such pollution. Subsequent to WDNR's submission, however, the U.S. Supreme Court reversed the D.C. Circuit. See *EPA v. EME Homer City Generation*, 134 S. Ct. 1584 (2014). WDNR has not supplemented its initial submission and did not provide any additional analysis regarding the impacts of emissions from sources in Wisconsin on air quality in other states with respect to the 2008 ozone NAAQS.

Although many of the programs and rules cited by Ohio EPA, IDEM, and WDNR reduce precursor emissions that contribute to ozone formation and interstate transport, they were not developed to address interstate transport for the more stringent 2008 ozone NAAQS. None of the states have demonstrated how these programs and rules provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS. IDEM in particular does not cite any rules currently being implemented by the state that are part of Indiana's approved SIP or that are being submitted as part of the present SIP submission to address interstate transport for the 2008 ozone NAAQS, instead Indiana refers only to rules that it anticipates may be implemented by the state in the future.

Ohio EPA and WDNR's submissions both rely on the states' implementation of CAIR, which was designed to address the 1997 Ozone NAAQS, but not the more stringent 2008 ozone standard being evaluated in this action. Regardless, neither the states

nor EPA are currently implementing the ozone-season NOx trading program promulgated in CAIR, as it has been replaced by CSAPR.

In turn, CSAPR addresses interstate transport requirements for the 1997 PM_{2.5} NAAQS, 1997 ozone NAAQS, and 2006 PM_{2.5} NAAQS. Because the three submissions addressed by this action concern states' interstate transport obligations for a different and more stringent standard (the 2008 ozone NAAQS), it is not sufficient to merely cite as evidence of compliance that these older programs have been implemented by the states or EPA.² These submissions all lack any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS. As such, the submissions themselves do not provide EPA with a basis to agree with the conclusions that the states already have adequate provisions in their SIPs to address CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS.

Although these submissions contain no data or analysis to support their conclusions with respect to section 110(a)(2)(D)(i)(I), EPA has recently shared technical information with states to facilitate their efforts to address interstate transport requirements for the 2008 ozone NAAQS. EPA

² This is particularly true where, as here, the states have failed to include any analysis of the downwind impacts of emissions originating within their borders. See, e.g., *Westar Energy Inc. v. EPA*, 608 Fed. Appx. 1, 3-4 (D.C. Cir. 2015).

developed this technical information following the same approach used to evaluate interstate contribution in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (December 3, 2015) ("CSAPR Update Rule").

In CSAPR, EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered "linked" to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate. EPA evaluated the comments

received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. EPA's analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, EPA determined that it was important to use a relatively lower one percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. EPA determined that a "0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors – an

indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.”

In the final CSAPR, EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and EPA’s previous use of a one percent threshold in CAIR. EPA used a single “bright line” air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 parts per million (ppm). The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. EPA has subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

On August 4, 2015, EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the

CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS. The modeling data released in this NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 20, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, EPA proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_x and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and

the supporting technical support documents have been included in the docket for this SIP action. The modeling data released in the NODA on August 4, 2015, and the CSAPR Update are the most up-to-date information EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update proposal for the 2008 ozone NAAQS, the air quality modeling: (1) identified locations in the U.S. where EPA expects nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (*i.e.*, nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720-30, December 3, 2015). Consistent with CSAPR, EPA proposed to use a threshold of one percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind nonattainment or maintenance receptors. EPA proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered "linked" to that receptor, and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

The results of EPA's air quality modeling with respect to Ohio, Indiana, and Wisconsin are summarized in Table 1 below. That modeling indicates that emissions from Ohio and Indiana are

linked to both nonattainment and maintenance receptors in downwind states, and that Wisconsin is linked only to downwind maintenance receptors.

Table 1. CSAPR Update Proposal Contributions to Downwind Nonattainment and Maintenance Areas

State	Largest Contribution to Nonattainment	Largest Contribution to Maintenance	Downwind Nonattainment Receptors Located in States	Downwind Maintenance Receptors Located in States
Indiana	6.24 ppb	14.95 ppb	Connecticut and Wisconsin	Kentucky, Maryland, Michigan, New Jersey, New York, Ohio and Pennsylvania
Ohio	2.18 ppb	7.92 ppb	Connecticut and Wisconsin	Connecticut, Kentucky, Maryland, Michigan, New Jersey, New York, and Pennsylvania
Wisconsin	0.34 ppb	2.59 ppb		Michigan

Accordingly, the most recent technical analysis available to EPA contradicts Indiana, Ohio, and Wisconsin's conclusion that each state's SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard.

EPA is proposing to disapprove the Indiana and Ohio SIPs for both the prong one and prong two requirements of CAA section 110(a)(2)(D)(i)(I). As explained above, the IDEM and Ohio EPA SIP submissions do not provide an adequate technical analysis demonstrating that each state's SIP contains adequate provisions

prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state. Moreover, EPA's most recent modeling indicates that emissions from those states are projected to significantly contribute to downwind nonattainment and maintenance receptors in other states.

EPA is proposing to disapprove the Wisconsin SIP for the prong two requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. As explained above, the WDNR SIP submission does not provide an adequate technical analysis demonstrating that the state's SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state. Moreover, EPA's most recent modeling indicates that emissions from Wisconsin are projected to contribute to projected downwind maintenance receptors in another state.

However, EPA is proposing to approve the Wisconsin SIP for the prong one requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. Although WDNR did not provide information or analyses explaining why existing SIP provisions are adequate to prevent significant contribution to nonattainment in downwind states, EPA's independent modeling presented in the NODA and the CSAPR Update Rule indicates that Wisconsin emissions are not linked to any projected downwind

nonattainment receptors. Accordingly, EPA proposes to find that the Wisconsin SIP has adequate provisions to prevent such significant contribution to nonattainment as to the 2008 ozone standard, and to accordingly approve the SIP for the prong one requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

B. Section 110(a)(2)(D)(i)(II) - prong four only

No action is being taken today on prong three relating to PSD. This prong was approved for Indiana on April 29, 2015 (80 FR 23713) and for Ohio on February 27, 2015 (80 FR 10591), and will be acted on for Wisconsin in a future rulemaking.

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong four requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of a state's sources to impacts on visibility programs in other states. The Guidance lays out two ways in which a state's infrastructure SIP may comply with prong four. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. These sections specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully

approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet its prong four requirements through a demonstration in its infrastructure SIP that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such a submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

What is EPA's Assessment of the States' Prong Four Submissions?

For prong four, relating to protection of visibility in another state, in this rulemaking EPA is proposing to disapprove the relevant portion of the SIPs for Ohio and Indiana. On September 11, 2015 (80 FR 54725), EPA approved Wisconsin's visibility requirements for the 2008 ozone NAAQS. Therefore, in this rulemaking, no action is necessary regarding Wisconsin's prong four requirements.

IDEM's submission acknowledges that Indiana is subject to the regional haze program, which addresses visibility-impairing pollutants. EPA finalized a limited approval of Indiana's

regional haze SIP submission for, among other things, BART for non-electric generating units (EGUs) and PM from EGUs on June 11, 2012 (77 FR 34218).

Ohio EPA's submission also mentions the regional haze program for addressing visibility, as well as the air agency's work with Federal Land Managers to address proposed major new sources in the state. EPA finalized a limited approval of Ohio's regional haze SIP submission for, among other things, non-EGUs on July 2, 2012 (77 FR 39177).

However, Indiana and Ohio's regional haze plans both rely on CAIR for addressing visibility for EGUs. EPA had originally found that CAIR was an acceptable solution for meeting the requirement of the regional haze program for EGUs.³ However, the D.C. Circuit remanded CAIR to EPA with instructions to replace that rulemaking with a new rulemaking consistent with the Court's opinion.⁴ Subsequently EPA issued a rulemaking stating that CAIR's replacement, CSAPR, could be used to satisfy the EGU portion of the regional haze plans. June 7, 2012 (77 FR 33642). In that same rulemaking, EPA issued limited disapprovals of Indiana and Ohio's regional haze SIP submissions, among other

3 "Technical Support Document for the Final Clean Air Interstate Rule: Demonstration that CAIR Satisfies the "Better-than-BART" Test As proposed in the Guidelines for Making BART Determinations." March 2005.

4 See *North Carolina v. EPA*, 531 F.3d 896; modified by 550 F.3d 1176 (D.C. Cir. 2008).

states, and issued FIPs that allowed CSAPR to meet the regional haze requirements for EGUs in applicable states (77 FR 33642).

Although both Indiana and Ohio have approved regional haze plans for their non-EGUs, they do not have fully approved regional haze SIPs in place because both States' EGU-related obligations are satisfied by EPA's CSAPR-based FIPs. Furthermore, neither Indiana nor Ohio has provided a demonstration in its infrastructure SIP submission showing that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Because the States have failed to meet either option for satisfying their prong four obligations laid out in the 2013 Guidance, EPA is proposing to disapprove prong four for the infrastructure element under section 110(a)(2)(D)(i)(II) for the 2008 ozone standard.

III. What action is EPA taking?

EPA is proposing to disapprove a portion of submissions from Indiana, Ohio, and Wisconsin certifying that each of their current SIPs are sufficient to meet the required infrastructure element under CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS, specifically prongs one, two, and four for Indiana and Ohio, and prong two for Wisconsin. In addition, EPA is proposing to approve the prong one portion of Wisconsin's SIP submission with respect to CAA section 110(a)(2)(D)(i).

IV. Statutory and Executive Order Reviews.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This rulemaking does not impose an information collection burden under the provisions of the PRA.

C. *Regulatory Flexibility Act (RFA)*

The Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rulemaking will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This 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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a

disproportionate risk to children because it proposes to disapprove a state rule.

H. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

J. *Executive Order 12898: Federal Actions to Address*

Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone,
Reporting and recordkeeping requirements.

Dated: March 7, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.
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