



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2007-0314; FRL-9985-97-Region 6]

Air Plan Approval; Oklahoma; Interstate Transport Requirements for the 1997 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, Withdrawal of proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a portion of an Oklahoma State Implementation Plan (SIP) submittal that pertains to the good neighbor provision requirements of the CAA with respect to interstate transport of air pollution which will interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires, in part, that each state, in its SIP, prohibit emissions that will interfere with maintenance of a new or revised NAAQS in another state. In this action, EPA is proposing to approve the Oklahoma SIP submittal as having met the interfere with maintenance requirement of the good neighbor provision for the 1997 ozone NAAQS in accordance with section 110 of the CAA. EPA is also withdrawing its October 17, 2011 proposed rule to disapprove this portion of Oklahoma SIP submittal.

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 No. EPA-R06-OAR-2007-0314, at <https://www.regulations.gov> or via email to young.carl@epa.gov. Follow the online instructions

for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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 Carl Young, 214-665-6645, young.carl@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Carl Young, 214-665-6645, young.carl@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Young or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

A. The 1997 8-hour Ozone NAAQS and Interstate Transport of Air Pollution

Under section 109 of the CAA, we are required to establish NAAQS that are protective of human health (primary NAAQS) and public welfare (secondary NAAQS). In 1997, we established new primary and secondary 8-hour ozone NAAQS of 0.08 parts per million (July 18, 1997, 62 FR 38856).¹ Ground level ozone is formed when nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight.

Section 110(a)(1) of the CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). The first two sub-elements are to prohibit emissions to any other state which would (1) significantly contribute to nonattainment or (2) interfere with maintenance of the new or revised NAAQS. The State of Oklahoma provided a May 1, 2007 SIP submittal to address these two sub-elements. The portion of the submittal addressing sub-element 1 (prohibit significant contribution to nonattainment in other states) was approved on December 29, 2011 (76 FR 81838). This action addresses the second sub-element of that submittal (prohibit interference with maintenance in other states).

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone NAAQS in several past regulatory actions. Most relevant to this action, EPA promulgated the Clean Air Interstate Rule (CAIR) in

¹ In 2008, we revised the primary and secondary 8-hour ozone NAAQS to 0.075 ppm (73 FR 16436, March 27, 2008) and in 2015 we revised the primary and secondary 8-hour ozone NAAQS to 0.070 ppm (80 FR 65292, October 26, 2015). This proposal pertains to the 1997 8-hour ozone NAAQS only.

2005 to address the requirements of the good neighbor provision for the 1997 (fine particulate) (PM_{2.5}) and 1997 ozone NAAQS (70 FR 25162, May 12, 2005). In the CAIR rulemaking, we did not analyze the contributions to downwind ozone nonattainment for Oklahoma and 5 other states along the western border of the CAIR modeling domain (70 FR 25162, 25246). CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176. The court determined that CAIR was “fundamentally flawed” and ordered EPA to “redo its analysis from the ground up.” 531 F.3d at 929.

In 2011, we promulgated the Cross-State Air Pollution Rule (CSAPR) to address the remand of CAIR.² CSAPR addressed the state and federal obligations under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to the 1997 8-hour ozone NAAQS and the 1997 annual PM_{2.5} NAAQS, as well as the 2006 24-hour PM_{2.5} NAAQS. To address the transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 8-hour ozone NAAQS, CSAPR established Federal Implementation Plan (FIP) requirements for affected electric generating units (EGUs) in 20 states.³ The air quality modeling conducted for CSAPR projected that emissions from Oklahoma would impact a receptor (or monitor) located in Allegan County, Michigan (monitor ID 260050003), which would have difficulty maintaining the 1997 8-hour ozone NAAQS (76 FR 48208, 48213, August 8, 2011). Thus, we issued a CSAPR supplemental rule that promulgated similar FIP requirements for Oklahoma and four other states (76 FR 80760, December 27, 2011).

² Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011); and Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone, 76 FR 80760 (December 27, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

³ Including an emissions budget that applied to the EGUs' collective ozone-season emissions of NO_x.

The CSAPR set emissions budgets which were to be implemented in two phases, with phase 1 to be implemented beginning with the 2012 ozone season and phase 2 to be implemented beginning with the 2014 ozone season. However, the CSAPR budgets were stayed by the D.C. Circuit in December 2011 pending further litigation. The D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012) (*EME Homer City I*), vacating CSAPR, but in April 2014, the Supreme Court issued an opinion reversing the D.C. Circuit and remanding the case for further proceedings. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600–01 (2014). After the Supreme Court issued its decision, the D.C. Circuit granted our motion to lift the stay and toll the compliance timeframes by three years.⁴ Thus, phase 1 of CSAPR was implemented beginning in 2015 and phase 2 was set to be implemented beginning in 2017(81 FR 13275).

On July 28, 2015, the D.C. Circuit issued its opinion on CSAPR regarding the remaining legal issues raised by the petitioners on remand from the Supreme Court, *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (*EME Homer City II*). This decision largely upheld our approach to addressing interstate transport in CSAPR, leaving the rule in place and affirming the EPA's interpretation of various statutory provisions and the EPA's technical decisions. The decision also remanded CSAPR without vacatur for reconsideration of the EPA's emission budgets for certain states.⁵ The court declared the CSAPR phase 2 ozone season emission budgets of 11 states invalid, holding that those budgets over-control with respect to the downwind air quality problems to which those states were "linked" for the 1997 ozone NAAQS,

⁴ See Respondents' Motion to Lift the Stay Entered on December 30, 2011, Document #1499505, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. filed June 26, 2014); Order, Document #1518738, *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. issued Oct. 23, 2014).

⁵ The Oklahoma emission budgets were not part of this court case and were not addressed in the ruling.

id. at 129–30, 138.⁶ For 10 of these states, the court found the budgets were invalid because modeling conducted as part of the CSAPR rulemaking showed that downwind air quality problems to which the states were linked in 2012 would be resolved in 2014, *id.* We addressed the remand of the ozone-season emissions budgets in the CSAPR Update.⁷ In doing so, EPA relieved all 11 states of the obligation to comply with the remanded phase 2 ozone season emission budgets, which would have gone into effect in 2017, 40 CFR 52.38(b)(2)(ii).

Various petitioners also filed legal challenges in the D.C. Circuit to the 2011 supplemental rule that promulgated a FIP for four states including Oklahoma.⁸ Considering the court’s decision in *EME Homer City II*, we examined the record supporting this supplemental rule and determined that, like the 10 states with remanded budgets, our modeling demonstrated that air quality problems at the downwind air quality problems to which four of the states added to CSAPR in the supplemental rule, including Oklahoma, were linked in 2012 would resolve by 2014 without further transport regulation (81 FR 74525). Accordingly, we removed the FIP requirements associated with the 1997 ozone NAAQS and sources in each of the four states are no longer subject to the phase 2 ozone season budget calculated to address that standard. 40 CFR 52.38(b)(2)(ii) (relieving sources in these four states, including Oklahoma, of the obligation to comply with the CSAPR phase 2 ozone season emission budgets after 2016).⁹

⁶ States are considered “linked” to a downwind air quality problem when their emissions contribute more than a threshold amount of ozone pollution to a receptor (monitor) projected to have problems attaining or maintaining the ozone NAAQS in a future year.

⁷ Promulgated in 2016 to address the requirements of the good neighbor provision for the 2008 ozone NAAQS. CSAPR Update Rule for the 2008 ozone NAAQS, 81 FR 74504, October 26, 2016.

⁸ See *Public Service Company of Oklahoma v. EPA*, No. 12–1023 (D.C. Cir., filed Jan. 13, 2012), the case was held in abeyance during the pendency of the litigation in *EME Homer City* and as of the time of this rule making is still held in abeyance.

⁹ We note that, because Oklahoma was linked to downwind air quality problems with respect to the 2008 ozone NAAQS in its analysis, we promulgated a new ozone season NO_x emission budget to address that standard at 40 CFR 97.810(a).

B. Oklahoma SIP Submittal Pertaining to the 1997 8-Hour Ozone NAAQS and Interstate Transport of Air Pollution

As noted above, relevant to this proposed action, Oklahoma made a May 1, 2007 SIP submittal to address CAA requirements to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states. Oklahoma provided additional information pertaining to the requirements in a supplemental December 5, 2007 letter. The submittals document the State's assessments that Oklahoma emissions will not contribute significantly to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in other states.

Consistent with EPA guidance at the time and EPA's approach in the Clean Air Interstate Rule (CAIR), the State's May 1, 2007 submittal focused primarily on whether emissions from Oklahoma sources significantly contribute to nonattainment of the 1997 ozone NAAQS in other states.¹⁰ The State did not evaluate whether Oklahoma emissions interfere with maintenance of these NAAQS in other states separately from significant contribution to nonattainment in other states. Like our CAIR approach, the SIP submittal presumed that if Oklahoma sources were not significantly contributing to violations of the NAAQS in other states, then no further specific evaluation was necessary for purposes of the interfere with maintenance sub-element of section 110(a)(2)(D). However, CAIR was remanded to EPA, in part because the court found that EPA had not correctly addressed whether emissions from sources in a state interfere with maintenance of the standards in other states. *See North Carolina*, 531 F.3d at 910-11. Therefore, we evaluated the May 1, 2007, Oklahoma submittal in light of the decision of the court.

¹⁰ On August 15, 2006, we issued our "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 PM_{2.5} National Ambient Air Quality Standards". The document is available in the regulations.gov docket at: <https://www.regulations.gov/document?D=EPA-R06-OAR-2007-0314-0030>.

Because EPA's 2011 CSAPR modeling projected that Oklahoma would be linked to a downwind maintenance receptor with respect to the 1997 ozone NAAQS, but not to a nonattainment receptor, EPA proposed to approve the portion of the SIP submittal asserting that Oklahoma emissions do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other states (76 FR 64065, October 17, 2011).¹¹ EPA finalized approval of this portion of the SIP submittal on December 29, 2011 (76 FR 81838).

Because EPA's CSAPR modeling projected that Oklahoma would be linked to a downwind maintenance receptor with respect to the 1997 ozone NAAQS, we proposed to disapprove, or in the alternative, approve, the portion of the May 7, 2007 SIP submittal asserting that Oklahoma does not interfere with maintenance of the 1997 8-hour ozone NAAQS in other states (76 FR 64065, October 17, 2011). We proposed to finalize our approval or disapproval action based on the final action for Oklahoma in the then-proposed supplemental CSAPR rule.¹² We are now withdrawing the October 17, 2011 proposal with respect to the "interfere with maintenance" clause of the good neighbor provision and instead proposing to approve this portion of the SIP submittal based on the rationale described below.

II. The EPA's Evaluation

More recent information provides support for our proposed approval of the conclusion in the SIP submittals that the State will not interfere with maintenance of the 1997 ozone NAAQS in any other state. As discussed above, air quality modeling conducted for the 2011 CSAPR rulemaking projected that emissions from Oklahoma would be linked to a maintenance receptor

¹¹ A maintenance receptor is a monitor projected to have difficulty maintaining the ozone NAAQS while a nonattainment is a monitor projected to have trouble attaining and maintaining the ozone NAAQS. Oklahoma was linked to an Allegan, Michigan maintenance receptor as discussed above.

¹² The supplemental CSAPR rule was proposed on July 11, 2011 (76 FR 40662) and finalized on December 27, 2011 (76 FR 80760). It added EGUs in Oklahoma, Iowa, Kansas, Michigan, Missouri, and Wisconsin to CSAPR.

in Allegan County, Michigan, in 2012. In CSAPR, we used air quality projections for the year 2012, which was also the intended start year for implementation of the CSAPR Phase 1 EGU emission budgets, to identify receptors projected to have air quality problems. The CSAPR final rule record also contained air quality projections for 2014, which was the intended start year for implementation of the CSAPR Phase 2 EGU emission budgets. The 2014 modeling results projected that the Allegan County receptor would have a maximum 8-hour ozone “design value” of 83.6 part per billion (ppb) before considering the emissions reductions anticipated from implementation of CSAPR.¹³ This value is below the value of 85 ppb that we used to determine whether a particular ozone receptor should be identified as having air quality problems that may trigger transport obligations in upwind states with regard to the 1997 ozone NAAQS (76 FR 48208, 48236). The 2014 modeling results show that the Allegan County, Michigan monitor to which Oklahoma was linked in the 2012 modeling was projected to no longer have air quality problems sufficient to trigger transport obligations with regard to the 1997 8-hour ozone NAAQS. Thus, Oklahoma would no longer interfere with maintenance of the 1997 ozone NAAQS at the Allegan County receptor in 2014.

As discussed above, in light of the remand of 10 other states’ CSAPR phase 2 ozone season budgets by the D.C. Circuit in *EME Homer City II*, we also evaluated the validity of the emissions budget promulgated for Oklahoma in the supplemental CSAPR rule, and determined that Oklahoma’s emissions would no longer contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 1997 ozone NAAQS at either

¹³ Design values are used to determine whether a NAAQS is being met. See projected 2014 base case maximum design value for Allegan County, Michigan receptor 26005003 at page B-16 of the June 2011 Air Quality Modeling Final Rule Technical Support Document for CSAPR, Document ID No. EPA-HQ-OAR-2009-0491-4140, available in regulations.gov.

receptor or in any other state. (81 FR 74524-25). This conclusion is based on EPA's most recent modeling analysis.

III. Proposed Action

We are proposing to approve the portion of a May 1, 2007 Oklahoma SIP submittal pertaining to the interfere with maintenance requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. We propose to find that the state's conclusion that Oklahoma emissions do not interfere with maintenance of the 1997 ozone NAAQS in another state is consistent with our conclusion regarding this good neighbor obligation.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: November 7, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018-24873 Filed: 11/15/2018 8:45 am; Publication Date: 11/16/2018]