

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0882 by one of the following methods:

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

B. *E-mail:* powers.marilyn@epa.gov.
C. *Mail:* EPA-R03-OAR-2010-0882, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2010-0882. 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.

Docket: All documents in the electronic docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Lead Standards and Related Reference Conditions, and Update of Appendices," that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: January 5, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2010-1025; FRL-9253-8]

Approval and Promulgation of Air Quality Implementation Plan; New Jersey and New York; Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA), EPA is proposing to disapprove the New Jersey and the New York State Implementation Plan (SIP) revisions submitted to address significant contribution to nonattainment or interference with

maintenance in another State with respect to the 2006 24-hour fine particle (PM_{2.5}) national ambient air quality standards (NAAQS). On January 20, 2010, New Jersey submitted a SIP revision to address section 110(a)(2)(D)(i) of the CAA concerning interstate transport requirements, and sections 110(a)(1) and (2) of the CAA concerning infrastructure requirements. On March 23, 2010, New York submitted a SIP revision to address the section 110(a)(2)(D)(i) of the CAA concerning interstate transport, and sections 110(a)(1) and (2) of the CAA concerning infrastructure SIP requirements. In this action, EPA is proposing to disapprove the portion of the New Jersey and the New York SIP revisions that addresses the section 110(a)(2)(D)(i)(I) requirement prohibiting a State's emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other State. The rationale for the disapproval action of the SIP revision is described in this proposal.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2010-1025, by one of the following methods:

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

2. *E-mail:* Werner.Raymond@epa.gov.

3. *Fax:* (212) 637-3901.

4. *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

5. *Hand Delivery or Courier.* Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2010-1025. 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 through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. 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 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 <http://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 <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the contact 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 a.m. to 4 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin (fradkin.kenneth@epa.gov), Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional

information by addressing the following questions:

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What is EPA's evaluation of New Jersey's submittal?
- IV. What is EPA's evaluation of New York's submittal?
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

We are proposing to disapprove portions of the submissions from the State of New Jersey and the State of New York that were to demonstrate that the States have adequately addressed elements of CAA section 110(a)(2)(D)(i)(I). Those elements require a State's SIP to contain adequate provisions to prohibit air pollutant emissions from sources within a State from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other State. We are proposing to determine that the New Jersey and New York submissions do not contain adequate provisions to prohibit air pollutant emissions from within the States that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other downwind States. The remaining elements of the submittal, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) regarding interference with measures required in the applicable SIP for another State designed to prevention of significant deterioration of air quality and protect visibility, are not addressed in this action and will be acted on in a separate rulemaking.

II. What is the background for this action?

On December 18, 2006, EPA revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³. Section 110(a)(1) of the CAA requires States to submit infrastructure SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.¹ As provided by section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized by section 110(k)(3) of the

¹ The rule for 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) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

CAA, where the portions of the State submittals are severable, EPA may decide to approve only those severable portions of the submittals that meet the requirements of the CAA. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the CAA.

CAA section 110(a)(2) lists the elements that infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On September 25, 2009, EPA issued its "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)" (2009 Guidance). EPA developed the 2009 Guidance to make recommendations to States for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i), for the revised 2006 24-hour PM_{2.5} NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated by the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

In the 2009 Guidance, EPA indicated that SIP submissions from States, pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(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. EPA further indicated that the State's submission must explain whether or not emissions from the State have this impact and, if so, address the impact. EPA stated that the State's conclusion must be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the State SIP submission, such as information concerning emissions in the State, meteorological conditions in

the State and the potentially impacted States, monitored ambient concentrations in the State, and air quality modeling. Furthermore, EPA indicated that States should address independently the “interfere with maintenance” requirement. This requires an evaluation of impacts on areas of other States that are meeting the 2006 24-hour PM_{2.5} NAAQS, not merely areas designated nonattainment. Lastly, in the 2009 Guidance, EPA stated that States could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour PM_{2.5} NAAQS because CAIR does not address this NAAQS.

EPA promulgated CAIR on May 12, 2005, (70 FR 25162). CAIR required States to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for PM_{2.5} and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and PM_{2.5} NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

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 Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA’s petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to “temporarily preserve the environmental values covered by CAIR” until EPA replaces it with a rule consistent with the Court’s opinion. *Id.* at 1178. The Court directed EPA to “remedy CAIR’s flaws” consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i), the

“Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone” (Transport Rule).² As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a State must not “significantly contribute to nonattainment” and “interfere with maintenance” of the 2006 24-hour PM_{2.5} NAAQS by other States. The modeling performed for the proposed Transport Rule shows that New Jersey and New York significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas.

On January 20, 2010, EPA received a SIP revision from the State of New Jersey that was to address the requirements of section 110(a)(2)(D)(i) pertaining to interstate transport and sections 110(a)(1) and (2) pertaining to infrastructure for the 2006 24-hour PM_{2.5} NAAQS. On March 23, 2010, EPA received a SIP revision from the State of New York that was to address the requirements of section 110(a)(2)(D)(i) pertaining to interstate transport and sections 110(a)(1) and (2) pertaining to infrastructure for the 2006 24-hour PM_{2.5} NAAQS. In this rulemaking, EPA is addressing only the requirements that pertain to prohibiting sources in New Jersey and New York from emitting air pollutants that will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other States.

In its submission, the State of New Jersey provided an analysis showing that the State significantly contributed to nonattainment or interferes with the maintenance of the 2006 24 hour PM_{2.5} NAAQS in seven northeastern and Mid-Atlantic States (*i.e.* Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania). New Jersey included a list of measures that were recently adopted by the State to reduce PM_{2.5}, SO₂, NO_x, and volatile organic carbon (VOC) emissions.

In its submission, the State of New York provided a list of measures from the attainment SIP revision for the 1997 PM_{2.5} NAAQS submitted by New York on October 27, 2009, including CAIR program rules, and the attainment SIP revision submitted by New York on February 8, 2008 for the 1997 8-hour Ozone NAAQS, that are expected to help achieve compliance with the 2006

24-hour PM_{2.5} NAAQS. New York also provided a commitment to the adoption of measures identified by EPA as needed as to address the interstate transport for the 2006 PM_{2.5} NAAQS upon EPA’s completion of the rulemaking.

III. What is EPA’s evaluation of New Jersey’s submittal?

On January 20, 2010, New Jersey submitted a SIP revision to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 PM_{2.5} NAAQS. New Jersey provided an analysis showing that the State significantly contributed to seven northeastern and Mid-Atlantic States (*i.e.* Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania). New Jersey based its assessment on a weight-of-evidence analysis approach using the results of four modeling analysis to determine significant contribution: EPA modeling performed for CAIR and the NO_x SIP call,³ Regional Haze SIP modeling performed by the Northeast States for Coordinated Air Use Management (NECAUM), and State Collaborative Modeling performed by the Midwestern, Mid-Atlantic, and Northeastern States to estimate interstate impacts and assess future control programs for ozone and particulate matter standards. New Jersey included a list of measures that were recently adopted by the State to reduce PM_{2.5}, SO₂, NO_x, and VOC emissions. In its SIP revision, New Jersey indicated that it was confident that these actions were more than adequate to address its contribution to downwind areas. New Jersey also provided a list of measures that it was either proposing or evaluating that would further reduce PM_{2.5} emissions. However, modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from New Jersey significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas. EPA’s 2009 Guidance directed that a State’s SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. In the 2009 Guidance, EPA recommended the various types of information that could be relevant to support a State’s SIP submission. EPA has determined that the New Jersey demonstration does not meet the requirements of

² See “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule,” 75 FR 45210 (August 2, 2010).

³ In October, 1998, EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone”—commonly called the “NO_x SIP Call.” See 63 FR 57356 (October 27, 1998).

110(a)(2)(D)(i)(I) because the State did not evaluate or demonstrate with a technical analysis that the emissions reduction measures provided in the SIP revision assure that New Jersey does not contribute significantly to nonattainment, or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS. Additionally, the SIP submittal did not go through public notice and comment.

The submitted provisions are severable. Therefore, EPA is proposing to disapprove those provisions which address the 110(a)(2)(D)(i)(I) demonstration and to take no action at this time on the remainder of the demonstration.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C. 7501–515) or is required in response to a finding of substantial inadequacy as described in 7410(k)(5) (SIP call) starts a sanctions clock. The provisions in the submittal we are disapproving were not submitted to meet either of those requirements. Therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered.

The full or partial disapproval of a State implementation plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the State.

IV. What is EPA's evaluation of New York's submittal?

On March 23, 2010, New York submitted a SIP revision to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS. New York indicated that emission reductions from measures proposed in the attainment SIP revision submitted by New York on October 27, 2009 for the 1997 PM_{2.5} NAAQS, including CAIR program rules, are expected to help achieve compliance with the 2006 24-hour PM_{2.5} NAAQS. New York further stated that all of the measures are expected to be adequate based on EPA's prior CAIR assessment, the effects of New York's attainment SIP revision for the 1997 PM_{2.5} NAAQS, the attainment SIP revision submitted by New York on February 8, 2008 for the 1997 8-hour Ozone NAAQS, and the supporting effects of New York's permitting programs. The State of New York also commits to the adoption of

measures identified by EPA as needed as to address the interstate transport for the 2006 PM_{2.5} NAAQS upon EPA's completion of the rulemaking.

The modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from New York significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas. EPA's 2009 Guidance directed that a State's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support a State's SIP submission. The State did not evaluate or demonstrate with a technical analysis that the emission reduction measures provided in the SIP revision assure that New York does not contribute significantly to, or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS. The State's submittal indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 PM_{2.5} NAAQS in part by virtue of the continuing applicability of CAIR program requirements at both the Federal and State levels. However, CAIR was promulgated before the 24-hour PM_{2.5} NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 PM_{2.5} NAAQS.⁴ Thus, EPA's 2009 Guidance explicitly notes that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the respective 2006 NAAQS. Because New York's submittal relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 PM_{2.5} NAAQS this submission is deficient. Several States claim that controls planned for, or already installed on, sources within the State to meet the CAIR provisions satisfied section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. However, States will not be able to permanently rely upon the emissions reductions predicted by CAIR, because EPA needs to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve New York's SIP submission pertaining to the requirements of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

⁴ Further, as explained above and in the Transport Rule proposal [75 FR 45210 (August 2, 2010)], the DC Circuit in *North Carolina v. EPA* found that EPA's quantification of States' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

Based upon our evaluation, EPA is proposing to disapprove the New York SIP revision because it does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA.

The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions that relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C. 7501–7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of the Act (SIP call) starts a sanctions clock. The provisions in the submittal we are disapproving were not submitted to meet either of those requirements. Therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered.

The full or partial disapproval of a State implementation plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the State.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection

burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform

Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

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, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

Statutory Authority

The statutory authority for this action is provided by sections 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 4, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011-1624 Filed 1-25-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-1012-201068; FRL-9257-6]

Approval and Promulgation of Air Quality Implementation Plans; Georgia; Disapproval of Interstate Transport Submission for the 2006 24-Hour PM_{2.5} Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 21, 2009, the State of Georgia, through the Georgia's Environmental Protection Division (GA EPD), provided a letter to EPA with certification that the Georgia state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour fine

particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. In this action, EPA is proposing to disapprove the portion of Georgia's October 21, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour PM_{2.5} NAAQS.

DATES: Comments must be received on or before February 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-1012 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. E-mail: benjamin.lynorae@epa.gov.

3. Fax: (404) 562-9019.

4. Mail: EPA-R04-OAR-2010-1012, 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: Ms. 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-2010-1012." 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 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 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: For information regarding the Georgia SIP, contact Mr. Zuri Fargalo, 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. Mr. Fargalo's telephone number is (404) 562-9152; e-mail address: fargalo.zuri@epa.gov. For information regarding the PM_{2.5} interstate transport requirements under section 110(a)(2)(D)(i), contact Mr. Steven Scofield, Regulatory Development Section, at the same address above. Mr. Scofield's telephone number is (404)