Dated: June 28, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–17740 Filed 7–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1012–201130; FRL–9438–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action 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 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Additionally, EPA is responding to comments received on EPA's January 26, 2011, proposed disapproval of the aforementioned portion of Georgia's October 21, 2009, submission. On October 21, 2009, the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), provided a letter to EPA certifying that the Georgia state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ 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. The effect of today's action will be the promulgation of a Federal Implementation Plan (FIP) for Georgia no later than two years from the date of disapproval. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for Georgia.

DATES: *Effective Date:* This rule will be effective August 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–1012. All documents in the docket are listed on the *http://www.regulations.*gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through *http://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 Farngalo, 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. Farngalo's telephone number is (404) 562–9152; *e-mail address: farngalo.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) 562–9034; *e-mail address: scofield.steve@epa.gov.*

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that NAAQS. On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$, thus states were required to provide submissions to address section 110(a)(1) and (2) of the CAA (infrastructure SIPs) for this revised NAAQS. Georgia provided its infrastructure submission for the 2006 $PM_{2.5}$ NAAQS on October 21, 2009. On January 26, 2011, EPA proposed to disapprove the portion of Georgia's October 21, 2009, infrastructure submission related to interstate transport (i.e., 110(a)(2)(D)(i)(I)) for the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 4584. A summary of the background for this final action is provided below.

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. States were required to provide submissions to address the applicable 110(a)(2) infrastructure requirements, including section 110(a)(2)(D)(i), by September 21, 2009.[1]

On September 25, 2009, EPA issued a guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2006 $PM_{2.5}$ NAAQS Infrastructure Guidance). EPA developed the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance to make additional 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 2006 $PM_{2.5}$ NAAQS Infrastructure 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 in the CAA. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. Specifically, 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 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance, EPA explained that submissions from states pertaining to the ''significant contribution'' and ''interfere with maintenance'' requirements in section 110(a)(2)(D)(i)(I) must contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or

[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, the submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006, signature date.

interfere with maintenance of the NAAQS in any other state. EPA described a number of considerations for states for providing an adequate demonstration to address interstate transport requirements in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. First, EPA noted that the state's submission should explain whether or not emissions from the state contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state and, if so, address the impact. EPA stated that the state's conclusion should be supported by an adequate technical analysis. Second, EPA recommended the various types of information that could be relevant to support the state's 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. Third, EPA explained that states should address the ''interfere with maintenance'' requirement independently which 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, EPA explained 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. CAIR, promulgated by EPA on May 12, 2005 (*see* 70 FR 25162), required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS 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 (DC Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Circuit, July 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 Circuit, December 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) requirements 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 Georgia significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. EPA has now completed the modeling for the final Transport Rule and, as indicated by the technical support documents for this action, Georgia in fact contributes to downwind nonattainment in another state or interferes with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another state.

On October 21, 2009, the State of Georgia, through GA EPD, provided a letter to EPA certifying that the Georgia SIP meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS.[3] Specifically, Georgia certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(I) requires that implementation plans for each state contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interfering with maintenance of the NAAQS (in this case the 2006 24-hour $PM_{2.5}$ NAAQS) in any other state. On January 26, 2011, EPA proposed to disapprove the portion of Georgia's October 21, 2009, submission related to interstate transport for the 2006 24-hour $PM_{2.5}$ NAAQS because EPA made the preliminary determination that Georgia's October 21, 2009, submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. This action is finalizing EPA's disapproval of Georgia's October 21, 2009, submission with regard to section 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* EPA's January 26, 2011, proposed disapproval rulemaking at 76 FR 4584 for further information on EPA's rationale for this final action.

II. EPA's Responses to Comments

EPA received three sets of adverse comments on the January 26, 2011, proposed rulemaking to disapprove the portion of Georgia's October 21, 2009, infrastructure submission on the interstate transport requirements of sections 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS. A full set of the comments provided by GA EPD, the North Carolina Department of Environment and Natural Resources, and Georgia Power (hereinafter referred to as ''the Commenters'') are provided in the docket for this final action. As a general matter, the comments overlapped on some issues, and as a result, EPA has organized the response to comments by issue. In addition, EPA acknowledges Georgia's comments regarding SIP processing in general. As Georgia is aware, EPA is considering improvements to the SIP process and appreciates Georgia's comments in that regard.

For the most part, the Commenters oppose EPA's proposed disapproval action for the interstate portion of Georgia's October 21, 2009, infrastructure submission for the 2006 24-hour $PM_{2.5}$ NAAQS. The comments fall generally into the following categories: (1) Correction for reference to ''CSA''; (2) concerns regarding states' inability to rely on CAIR to satisfy the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS; (3) apparent lack of guidance from EPA on how states should meet the requirements; (4) concerns regarding the procedure of taking action to disapprove

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

[3] Georgia's October 21, 2009, certification letter also explained that Georgia's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour $PM_{2.5}$ NAAQS; however, today's final rulemaking only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA will address the other section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in relation to Georgia's SIP in a rulemaking separate from today's final rulemaking.

Georgia's submittal; (5) acknowledgement of states' efforts and air quality conditions; and (6) concerns related to the Transport Rule. A summary of the comments and EPA's responses are provided below.

Correction for Inadvertent Reference to ''CSA'' in Georgia Rulemaking

Comment 1: One Commenter states that on page 4586 of the **Federal Register** notice of EPA's January 26, 2011, proposed disapproval, that ''EPA makes a reference to 'CSA' that appears to be completely out of place.'' The Commenter goes on to state that ''[t]here appears to be no basis for this reference and certainly has no relation to anything that Georgia included in our SIP submittal.''

Response 1: EPA agrees with this comment, and notes that the reference to ''CSA'' in EPA's January 26, 2009, proposed disapproval action related to a portion of Georgia's October 21, 2009, submission was a typographical error. ''CSA'' should be replaced with ''Georgia Multi-pollutant Rule'' and as such is being corrected in this final rule. In reviewing Georgia's SIP revision, EPA was aware of Georgia's multi-pollutant rule.

States' Inability To Rely on CAIR To Satisfy the 110(a)(2)(D)(i)(I) Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS

Comment 2: All Commenters express concern with EPA's proposed disapproval and assert that states should be able to rely on the Clean Air Interstate Rule (CAIR) to address the transport requirements in section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. The Commenters explain that the Court left CAIR in place and opine that states should be able to rely on emissions reductions from CAIR to address transport. One Commenter also mentions that ''[t]he Court did not impose a schedule on EPA for completing the Transport Rule; therefore, states have no assurances that EPA will ever replace the CAIR rule. Since there is no guarantee that the Transport Rule will be promulgated in a timely manner, states cannot rely on the reductions in the proposed Transport Rule and must rely on the CAIR reductions, which are permanent and enforceable.'' Another Commenter states: ''[b]ased on the belated guidance, EPA prohibits the states from relying in any way on emission reductions required under CAIR even though the rule remains in place today, is federally enforceable and is achieving the anticipated emissions reductions.''

Response 2: As discussed in EPA's September 25, 2009, guidance, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (hereinafter referred to as ''EPA's 2009 Guidance''), states cannot rely on the CAIR rule for the submission for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS, and was never intended to address this NAAQS. CAIR was originally put in place to address the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In order to adequately address the requirements of section 110(a)(2)(D)(i)(I), states can only rely on permanent emission reductions to address transport for the *2006 24-hour $PM_{2.5}$ NAAQS,* and must include an appropriate technical demonstration.

Comments Regarding Guidance From EPA on How States Should Meet the Requirements

Comment 3: Two Commenters note that that 110(a)(2) infrastructure SIPs for the 24-hour $PM_{2.5}$ NAAQS were due September 21, 2009, but EPA's guidance was not released to the states until September 25, 2009.

Response 3: While EPA's 2009 Guidance regarding the 110(a)(2) infrastructure SIPs for the 2006 24-hour $PM_{2.5}$ NAAQS was released on September 25, 2009, this guidance did not establish new requirements beyond those already required by section 110(a)(2)(D)(i)(I) of the CAA. Relevant portions of section 110(a)(2) require, as follows, ''Each [implementation plan submitted by a State under this chapter] shall * * * contain adequate provisions—(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard * * * '' States are statutorily obligated to address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. This above-quoted provision provides States with the requirement.

Comment 4: Two Commenters express concern about communication in the SIP process. The Commenters go on to say that ''[e]ven though EPA's guidance was released only a short time later, EPA Region 4 gave absolutely no indication to its co-regulators that there would be a fatal flaw with the submittal.'' The commenter further states that, ''it wasn't until a year later that states were informed via an e-mail on August 27, 2010, that 'All Region 4 states submitted complete infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS, and our intention is to disapprove the 110(a)(2)(D)(i)(I) portion of those unless it is withdrawn by the state.' ''

Response 4: EPA disagrees with the Commenters' assertion that they were initially notified in an August 27, 2010, e-mail about EPA's expectations and concerns with states' submissions reliance on CAIR to meet the requirements for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. As was explained above, Georgia's obligation stems from the CAA. As is EPA's practice, EPA reminded the States on a number of occasions of the interstate transport obligations in 110(a)(2)(D)(i)(I). In addition to the informal reminders (via e-mail and teleconferences, among other avenues), EPA's January 2011 proposal served as a formal, legal notification and provided for a formal opportunity for public comment.

Although EPA reminded states of EPA's expectations and concerns with states' reliance on CAIR to meet the requirements for section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS in an August 27, 2010, e-mail, EPA formally notified states of the expectations and concerns in the EPA's 2009 Guidance. Specifically, EPA noted that SIP submissions that relied on CAIR for satisfying the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS would be inadequate, as CAIR did not address this NAAQS. EPA's proposed disapproval of the portion of Georgia's October 21, 2009, submission did not occur until January 2011, which was over a year after EPA's notification (through the release of the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance) of any states' deficiency for meeting the 110(a)(2)(D)(i)(I) requirement for the 2006 24-hr $PM_{2.5}$ NAAQS had that state relied on CAIR. Thus, Georgia had notification and an opportunity to provide supplemental information between the release of EPA's 2009 Guidance and EPA's proposed disapproval action in January 2011.

Georgia did provide some information in its comment letter on the January 2011 proposal. This information was also provided to EPA as part of Georgia's comments on the proposed Transport Rule. EPA's Transport Rule is expected to address those issues as part of the Federal Implementation Plan included as part of the Transport Rule. However, the information provided in Georgia's comment letter is not adequate to meet the requirements of section

110(a)(2)(D)(i)(I) as a formal SIP submittal.

Comment 5: One Commenter raises concerns with EPA treating its 2009 Guidance as ''binding'' and suggests that this action is contrary to statements made by EPA in support of EPA and states being ''co-regulators.''

Response 5: EPA disagrees with the Commenter's assertion that the proposed disapproval is contrary to EPA treating the states as co-regulators. As was explained earlier, EPA has regular contact with its state co-regulators. With regard to the proposed disapproval action, EPA corresponded with Georgia regarding the October 21, 2009, submittal prior to the proposed disapproval. In the past several months, EPA has corresponded with Georgia on a number of occasions regarding other SIP revisions and EPA's consideration of those revisions—as is EPA's typical practice to support the co-regulator relationship.

Further, EPA notes that the January 26, 2011, proposed disapproval of Georgia's October 21, 2009, submission as it relates to satisfying the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS is based on EPA's determination that Georgia did not provide adequate information to demonstrate compliance with the requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS for Georgia. No new requirements were introduced in EPA's 2009 Guidance. This guidance simply provided additional clarifications but the CAA requirements existed long before Georgia's September 21, 2009, deadline for a SIP submission. Notably, Georgia's submission was provided after EPA's 2009 Guidance.

Comment 6: One Commenter mentions that ''EPA has not stated the amount of reduction they believe is needed to satisfy the transport requirements. Not only is this a situation where EPA moves the finish line (by releasing guidance AFTER the due date), the finish line isn't even knowable (because EPA refuses to inform the states how much reduction is enough to satisfy the requirements). EPA seems to say that it has to be whatever the final Transport Rule says, even though there is no final Transport Rule.''

Response 6: EPA disagrees with this comment. As was explained earlier, the state obligation stems from the CAA itself. As co-regulators, EPA makes efforts to assist states in submitting approvable revisions—and EPA took such action with EPA's 2009 Guidance. States had an opportunity to conduct their own analyses regarding interstate transport. Section 110(a)(2) requires that the state's submission contain adequate provisions prohibiting emissions from the state that contribute significantly to nonattainment of or interfere with maintenance of the NAAQS in any other state. In order to ensure compliance with the CAA's mandate of ''adequate'' provisions, the state's SIP revision must be supported by an adequate technical analysis, including, but not limited to, information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state and the potentially impacted states, the distance to the nearest area that is not attaining the NAAQS in another state, and air quality modeling. EPA appreciates that Georgia has initiated the process of such an analysis (which is included in Georgia's comment letter).

Comment 7: One Commenter notes EPA's statement in the January 26, 2011, proposed disapproval where the Agency states: ''* * * without an adequate technical analysis EPA does not believe that states can sufficiently address the section 110(a)(2)(D)(i)(I) requirement for the 2006 PM2.5 NAAQS.'' The Commenter mentions that they, and possibly other states, were precluded from providing the necessary technical analysis by EPA because EPA did not release the guidance until after the SIP submission deadline. Further, the Commenter notes that EPA did not provide specific criteria for the technical analysis in the 2006 $PM_{2.5}$ Infrastructure Guidance, and mentions that ''[h]ad EPA provided adequate criteria for an approvable SIP in a timely manner, it is likely that [the state] would have been able to submit an approvable SIP by the statutory deadline.'' Another Commenter states: ''EPA has not provided Georgia and other similarly situated states with a meaningful opportunity to develop the required SIP.'' Further, the Commenter mentions that ''States cannot possibly be expected to develop approvable SIPs without knowing in advance the standards against which those SIPs will be judged.''

Response 7: EPA does not agree with the Commenter's assertions. As was explained earlier, the SIP submission requirement is identified in the CAA. EPA provided guidance before Georgia submitted its October 21, 2009, SIP revision. In addition, States were alerted that a technical analysis that involved modeling and permanent, enforceable emission reductions could be used to make an adequate demonstration to satisfy the 110(a)(2)(D)(i)(I) requirement for the 1997 $PM_{2.5}$ and ozone NAAQS when EPA promulgated CAIR in 2005. Due to the legal status of CAIR, states relying on CAIR as permanent were taking a risk given EPA's proposed Transport Rule and the court decision on CAIR. Further, states were officially informed that the 110(a)(2)(D)(i)(I) requirement for the 2006 24-hour $PM_{2.5}$ NAAQS could not be satisfied by reliance on CAIR (since that rule did not consider the 2006 24-hour $PM_{2.5}$ NAAQS) when EPA released EPA's 2009 Guidance . The submittal by Georgia relied on CAIR and it did not include a technical analysis—despite EPA's efforts to alert states that mere reliance on CAIR, on its own, would not meet the CAA requirements. EPA appreciates that Georgia's comment letter on the January 2011 proposal did provide additional technical support. As Georgia itself noted, some of the information provided by Georgia on the January 2011 disapproval proposal was also provided to EPA in response to the proposed Transport Rule. As was discussed in an earlier response, the technical information provided is not adequate to meet section 110(a)(2)(D)(i)(I) requirements.

Comment 8: One Commenter mentions that ''Georgia learned for the first time in this proposed disapproval that the only thing preventing us from having our SIP approved is an adequate technical analysis.'' The Commenter then asserts that ''* * * since EPA has not provided a 'reasonable deadline' to correct the deficiency, we are including our technical analysis as part of our comments on this proposal.''

Response 8: Consistent with section 110 of the CAA and implementing regulations at 40 CFR part 51, and as a general matter, ''adequate technical analyses'' are a cornerstone of ensuring that SIP revisions are approvable. EPA has addressed the timing of information in previous comments, but to underscore that point, EPA alerted states formally upon the release of the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance that CAIR could not be used to meet the 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. Georgia acknowledges as such in the October 21, 2009, infrastructure submission. With regard to the latter point in the comment and the technical analysis, see Response 7, above. In addition, there are formal SIP revision requirements described in 40 CFR part 51, subpart F. EPA does not agree that Georgia's comments on the January 2011 disapproval proposal may be considered a ''SIP revision;'' nonetheless, EPA did review the comments as was described in Response 7, above. Further information regarding the path forward

following today's action is described below.

Upon disapproval of Georgia's submittal, EPA has a legal obligation, pursuant to the Act, to promulgate a FIP. Section 110(a)(1) of the Act requires states to submit SIPs that meet certain requirements within three years of promulgation of a NAAQS. These SIPs are required to contain, among other things, adequate provisions ''prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard.'' Section 110(a)(1) gives the Administrator authority to prescribe a period shorter than three years for the states to adopt and submit such SIPs, but does not give the Administrator authority to lengthen the time allowed for submission.

Section 110(c)(1) of the Act, in turn, requires EPA to promulgate FIPs if EPA has found that the state has failed to make a required submission or if EPA has disapproved a state submission our found it to be incomplete. Specifically, section 110(c)(1) requires EPA to promulgate a FIP within two years after the Administrator ''(A) finds that a state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section or (B) disapproves a state implementation plan submission in whole or in part.'' The Act uses mandatory language, finding that EPA *shall* promulgate a FIPs at any time within 2 years after the actions identified 110(c)(1)(A) or 110(c)(1)(B) have occurred. EPA's legal obligation to promulgate FIPs arises when those actions occur without regard to the underlying reason for the underlying state SIP deficiency. The obligation to promulgate a FIP must be discharged by EPA unless two conditions are met: (1) The state corrects the deficiency; and (2) the Administrator approves the plan or plan revision, before the Administrator promulgates the FIP.

Under this statutory scheme, EPA has authority and an obligation to promulgate a FIP to correct a SIP deficiency if the actions identified in section 110(c)(1)(A) or (B) have been taken, and the two conditions identified in 110(c)(1) have not been met. The question of whether EPA has authority to promulgate any particular FIP, therefore, must be considered on a state specific basis.

EPA disagrees with the Commenter's suggestion that the rule is inconsistent with the CAA because it does not give states time to develop, submit and receive EPA approval of SIPs before the FIP goes into effect. Section 110(a)(2) calls on states to submit SIPs that contain adequate provisions prohibiting the emissions proscribed by section 110(a)(2)(D)(i)(I). However, when EPA has not received such SIP submission or has disapproved a SIP submission, it has an obligation created by section 110(c)(1) to promulgate a FIP that meets the requirements of section 110(a)(2)(D)(i)(I). EPA does not believe it has authority to adjust the deadlines established in the Act in order to give states additional time, after promulgation of the Transport Rule, to submit SIPs that comply with section 110(a)(2)(D)(i)(I). EPA does not believe it has authority to alter the statutory requirement that it promulgate FIPs within two years of making a finding of failure to submit. EPA sought to discharge this duty with respect to the states covered by CAIR for the $PM_{2.5}$ NAAQS by promulgating CAIR; however, the Court found that rule unlawful and not sufficiently related to the statutory mandate of section 110(a)(2)(D)(i)(I). For this reason, EPA does not believe it could argue that the CAIR FIPs completely discharged its duty to promulgate FIPs with respect to the states whose section 110(a)(2)(D)(i)(I) SIPs are disapproved.

EPA is following the SIP process established in the statute. The 110(a) SIPs for the 2006 $PM_{2.5}$ standard were due in 2009. In each case, states were given the full 3 years to meet the requirement. The Transport Rule provides the FIP to fulfill the requirement that was unmet by the states through SIPs. EPA is required to promulgate a FIP within 2 years of a state's failure to have an approved SIP. States were in fact given the first chance to fulfill the requirement of Section 100(a)(2)(D)(i)(I). EPA's action is subsequent to the State's opportunity to first fulfill the requirement.

EPA has made every attempt to smooth the transition between the requirements of CAIR and those of the forthcoming Transport Rule. For future requirements, EPA will also make every effort to address transition issues. However, EPA cannot ignore its statutory obligations and therefore cannot ensure that no new requirements will be placed on the sources being regulated by this action. Every time a NAAQS is revised, there is a statutory obligation for states to submit SIPs to address certain CAA requirements. If states fail to meet the deadlines or submit incomplete or inadequate SIPs, EPA must act to ensure that the requirements are put into place.

Even though EPA is issuing a FIP, the State still has the opportunity to submit a SIP that can tailor requirements to the specific needs and concerns of the State in order to meet the applicable state budgets. Prior to this action, states had ample time under the provisions of the CAA to develop and submit approvable SIPs and did not. No state affected by the Transport Rule has submitted a SIP to replace the emission reductions that were required by CAIR, despite the *North Carolina* opinion issued in December 2008 that clearly said CAIR did not adequately address 110(a)(2)(D)(i)(I). While the remand left CAIR in place and states and sources were required to continue to comply with it, states had the opportunity to develop replacement measures to ensure that 110(a)(2)(D)(i)(I) components of their SIPs would continue to be fulfilled in the future.

Objection to the Use of Disapproval Actions for States' Implementation Plans

Comment 9: Three Commenters express concerns about EPA's proposed disapproval and indicate that EPA had an obligation to use section 110(k)(5) of the CAA. One Commenter states: ''EPA continues to be resistant to exploring a legislative approach to fixing some of the SIP issues, yet the correct process under the existing Clean Air Act to appropriately address this issue is not being used.'' The Commenter goes on to state: ''Section 110(k) requires that when EPA finds a plan to be inadequate, EPA shall (1) require the state to revise the plan, (2) notify the state of the inadequacy, and (3) may establish reasonable deadlines not to exceed 18 months.'' Additionally, the Commenter mentions that in their opinion, ''The proposed disapproval completely ignores #1 and #3 and only partially satisfies #2. Regarding #2, the EPA proposal simply states EPA's position that the SIP is inadequate, but fails to notify us 'of the inadequacy.' '' The Commenter asserts that ''* * * EPA still has failed to provide any specificity on what is required of a state to submit an approvable SIP,'' and mentions that ''These Clean Air Act requirements are not discretionary, and that 'EPA must comply with the provisions of Section 110(k)(5) by providing a reasonable period of time to allow [the state] to satisfy the inadequacy and sufficient and timely instructions on what is required to revise the plan instead of

relying on a theoretical FIP as the sole remedy.' '' The Commenter concludes by stating that ''EPA may not take final action on this proposal until it complies with Section 110(k)(5) of the Clean Air Act.'' Another Commenter states ''[s]ection 110(k)(5) requires EPA to notify the State of the inadequacies and authorizes the Agency to establish reasonable deadlines for the submission of such plan revisions.'' That Commenter goes on to conclude that ''[t]he proposed disapproval of Georgia's SIP in combination with the proposed FIP violates these requirements.''

Response 9: The issues raised in this comment are also addressed by Response 8, above. To further clarify what is included in Response 8, Georgia's October 21, 2009, submission relating to section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS is being disapproved pursuant to sections 110(k)(2) and (3) of the CAA, not section 110(k)(5). Section 110(k)(5) is applicable to SIPs that have been federally-approved, and are subsequently found to be substantially inadequate. This is not the case for Georgia's October 21, 2009, submission relating to section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. The October 21, 2009, submission was provided to EPA for a new requirement that was triggered by the promulgation of the 24-hour $PM_{2.5}$ NAAQS in 2006. EPA is required under section 110(k)(3) to act upon a state submittal with an approval or disapproval, within the time period designated under section 110(k)(2). With this action, EPA is disapproving Georgia's October 21, 2009, submission relating to section 110(a)(2)(D)(i)(I), because EPA has made the determination that the Georgia SIP does not satisfy these requirements for the 2006 $PM_{2.5}$ NAAQS. Georgia's submission is inadequate for its failure to meet the statutory requirements of 110(a)(2)(D)(i)(I) as noted above. The State can correct the deficiency by submitting a transport SIP that meets the provisions of the final Transport Rule or otherwise eliminates significant contribution and interference with maintenance. *See* Response to Comment 8.

Comment 10: One Commenter expresses concern about EPA's statement in the January 26, 2011, proposed disapprovals regarding the Agency not taking action on some elements of the states' 2006 24-hour $PM_{2.5}$ infrastructure submissions, and notes the Agency's statutory timeframe for taking action on SIP submissions. Specifically, the Commenter cites the following statement from EPA's January 26, 2011, proposed rule: ''[t]herefore, EPA is proposing to disapprove those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the demonstration at this time.'' The Commenter mentions that EPA is ''clearly in violation of Clean Air Act Section 110(k)(2)'' by not taking action on the remainder of the states' submissions.

Response 10: In this action, EPA is disapproving certain elements of the State's submission related to the requirements under section 110(a)(2)(D)(i)(I). EPA has also determined that these elements are severable from the rest of the submission. Comments on elements that are not being addressed here are not relevant to this action and have no bearing on the appropriateness of this disapproval. As noted herein, EPA intends to act on those elements in a subsequent action.

Comment 11: One Commenter indicates that EPA could use section 110(k)(4) to conditionally approve the states' implementation plans for the transport requirements related to the 2006 24-hour $PM_{2.5}$ NAAQS in anticipation of the promulgation of the final Transport Rule, ''[a]ssuming EPA adequately addresses modeling and emissions inventory concerns raised during the comment period* * *''

Response 11: EPA does not agree that the use of 110(k)(4) for a conditional approval is appropriate in this circumstance. Conditional approvals may be used to approve a plan revision based on a written commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. If the State does not adopt specific enforceable measures within a year, the conditional approval automatically converts to a disapproval. The forthcoming Transport Rule is an action that is being promulgated from EPA and not the State, so it is unclear what ''condition'' the State would be responsible for satisfying by relying on the final promulgation of the Transport Rule. Further, as the Commenter implies, use of 110(k)(4) is optional.

Comment 12: One Commenter states: ''EPA's disapproval of SIPs is part of a larger effort by EPA to bypass the states in addressing interstate transport under the 1997 ozone and annual $PM_{2.5}$ standards and the 2006 24-hour $PM_{2.5}$ standard.'' The Commenter goes on to state that ''[i]n EPA's proposed Transport Rule and in the proposed disapproval of the interstate transport portions of states' 24-hour $PM_{2.5}$ infrastructure SIPs, EPA is usurping states' rights to address air quality issues within their borders.''

Response 12: EPA disagrees with this comment. The forthcoming Transport Rule will help to protect downwind states from adverse impacts of emissions from upwind states. Otherwise, the remedy for such downwind states would be to individually petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii). Further, the October 21, 2009, SIP revision submitted by Georgia was not adequate to meet the requirements of section 110(a)(2)(D)(i)(I). (Similar issues are also discussed in Response 8, above.)

Comment 13: One Commenter mentions that ''[g]iven the role reserved to states by Congress, EPA must afford the states a meaningful opportunity to develop SIPs before EPA issues a federal implementation plan (FIP).''

Response 13: EPA disagrees with the Commenter's assertion that the State did not have meaningful opportunity to develop a SIP revision (i.e., in this case, to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS). To the contrary, states had three years from the time the 2006 24-hour $PM_{2.5}$ NAAQS were promulgated to develop a SIP revision to meet the 110(a)(2)(D)(i)(I) requirements for this NAAQS. Specifically, the 2006 24-hour $PM_{2.5}$ NAAQS was promulgated on September 21, 2006, and thus submissions to address the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS were due from the states on September 21, 2009. EPA released its guidance in September 2009 and did not propose disapproval of the Georgia's October 21, 2009, SIP revision until January 26, 2011, which was more than a year after the State was formally made aware that the State could not rely on CAIR to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. *See also* Response to comment 8.

Comment 14: One Commenter states: ''[w]hile the courts have recognized that EPA has a role to play in resolving interstate transport issues, the Agency has no 'roving commission' to effectively leapfrog over the SIP process and impose its own choices on states and regulated parties.'' The Commenter indicates that EPA is circumventing the SIP process with the proposed disapproval action, and cites *Michigan* v. *EPA,* 268 F.3d 1075, 1084 (DC Cir. 2001) for support of its proposition. Specifically, the Commenter mentions ''EPA's disapproval of Georgia's SIP combined with the impending FIP

usurps the role of the states in the federal-state partnership.'' Further, the Commenter states ''[t]he proposed disapproval and the proposed transport rule both suggest that EPA intends to supplant the SIP process with its own Transport Rule FIP this year.''

Response 14: First, EPA disagrees with the Commenter's suggestion that the proposed disapproval action for the portion of Georgia's October 21, 2009, SIP revision and the Agency's option to put the forthcoming Transport Rule in place as a FIP is circumventing the SIP process. As noted in previous responses in this rulemaking (such as Response 8 and 13), states had three years from the date of promulgation of the 2006 24-hour $PM_{2.5}$ NAAQS to develop an adequate submission to meet the requirements of section 110(a)(2)(D)(i)(I) for this NAAQS. Specifically, the 2006 24-hour $PM_{2.5}$ NAAQS were promulgated on September 21, 2006, and thus submissions to address the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS were due from the states on September 21, 2009. While EPA did not release the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance until September 25, 2009, EPA also did not propose disapproval of the Georgia's October 21, 2009, SIP revision until January 26, 2011, which was more than a year after the State was formally made aware that the State could not rely on CAIR to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA notes that CAIR was not intended to meet the transport requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. As was discussed at length in Response 8 above, EPA's process with regard to today's disapproval and the forthcoming Transport Rule follow clear processes described in the CAA. EPA appreciates that commenter would have preferred that another approach be utilized; however, EPA's action today followed an established process for such actions. Lastly, the *Michigan* v. *EPA* case cited to by the commenter simply does not apply to the current action. That case involved EPA's implementation of a permitting program (not a SIP action) where there were complicating questions of Indian Law and jurisdiction. In today's action, EPA is acting consistent with the procedures set forth in the CAA, as was described in detail in Response 8.

Acknowledgement of States' Efforts and Air Quality Conditions

Comment 15: Two Commenters mention innovative air pollution control strategies that states have implemented to reduce emissions, and seem to indicate that the adoption of those strategies, in-and-of itself, complies with the interstate transport provisions of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. The Commenters opine that state laws and rules have resulted in enormous reductions of pollutants that are key pollutants to interstate transport.

Response 15: EPA agrees that states have implemented innovative air pollution control strategies that have provided significant reductions in emissions, and the Agency commends states for their efforts. However, today's action relates to whether Georgia has provided an adequate technical analysis and emissions reductions to show compliance with the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS for Georgia. It is EPA's final determination that Georgia's October 21, 2009, submission (as well as the technical analysis provided in the public comments) do not provide an adequate technical analysis and emissions reductions for this determination and thus EPA is disapproving the portion of Georgia's October 21, 2009, submission as it relates to the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS for Georgia.

Concerns Related to the Transport Rule

Comment 16: One Commenter expresses concern regarding EPA's statement in the January 26, 2011, proposed disapproval regarding the modeling used to support the proposed Transport Rule, and the findings in relation to whether states significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas. The Commenter states that ''based on 2007–2009 monitoring data, all of these areas are currently meeting the 2006 24-hour $PM_{2.5}$ NAAQS'' and expresses concern that EPA did not note the area's status with regard to the 2006 24-hour $PM_{2.5}$ NAAQS in the proposal. The Commenter goes on to say ''we noted in our official comments on the proposed Transport Rule, EPA had numerous errors in the modeling inputs and failed to ensure that the model performance was acceptable. This may explain the disparity between EPA's modeling results and the real world monitors.''

Response 16: Today's action relates to whether the State provided an adequate technical analysis and emissions reductions to show compliance with the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS for Georgia, and is not based on the attainment status of Georgia areas. Georgia did not provide adequate technical analysis to EPA to demonstrate compliance with the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. With regard to the Commenter's concern about the forthcoming Transport Rule, EPA notes that the Agency received numerous comments on the proposed Transport Rule and is considering those comments as it works toward promulgation of a final Transport Rule. All comments on the Transport Rule will be addressed in that context.

Comment 17: All Commenters assert that EPA's proposed finding of significant contribution for the proposed Transport Rule is based on an inaccurate emissions inventory, fails to take into account all of the reductions required by the state rules already in effect, and contains numerous other errors that only compound these problems.

Response 17: EPA received numerous comments on the proposed Transport Rule and is considering those comments as it works toward promulgation of a final Transport Rule. All comments on the Transport Rule will be addressed in that context.

III. Final Action

EPA is taking final action to disapprove the portion of Georgia's October 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the determination that Georgia's SIP does not satisfy the requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. Although EPA is taking final action to disapprove the portion of Georgia's October 21, 2009, submission relating to section 110(a)(2)(D)(i)(I), EPA acknowledges the State's efforts to address this requirement in its October 21, 2009, submission. Unfortunately, the submittal relies on CAIR and without an adequate technical analysis EPA does not believe that states can adequately address the section 110(a)(2)(D)(i)(I) requirement for the 2006 $PM_{2.5}$ NAAQS. The purpose of the Transport Rule that EPA is developing and has proposed is to respond to the remand of CAIR by the Court and address the section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS for the affected states. In today's action, EPA is not taking any disapproval action on the remaining elements of the submission, including other section 110(a)(2) infrastructure elements, and specifically the section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another state designed to prevent significant deterioration of air quality and protect visibility but instead will act on those provisions in a separate rulemaking.

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.A. section 7501–7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being disapproved in today's notice) were not submitted to meet requirements for Part D, and therefore, no sanctions will be triggered. This final action 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 to satisfy the 110(a)(2)(D)(i)(I) requirement for Georgia for the 2006 $PM_{2.5}$ NAAQS.

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, 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 SIP disapproval under section 110 and subchapter I, part D of the CAA 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 (RFA)

The 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 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 final 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 SIP disapproval under section 110 and subchapter I, part D of the CAA 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 CAA 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. EPA continues 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 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 disapproves 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 CAA. 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 disapproving 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 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 SIP disapproval under section 110 and subchapter I, part

D of the CAA 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 (NTTAA)

Section 12(d) of the 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 the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. 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 CAA.

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

Executive Order 12898 (59 FR 7629, February 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 CAA. 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 CAA 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.

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 28, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

■ 2. Section 52.578 is amended by adding paragraph (d), to read as follows:

§ 52.578 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(d) *Disapproval.* EPA is disapproving portions of Georgia's Infrastructure SIP for the 2006 24-hour $PM_{2.5}$ NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

[FR Doc. 2011–17998 Filed 7–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1015–201129; FRL–9438–3]

Approval and Promulgation of Air Quality Implementation Plan; North Carolina; Disapproval of Interstate Transport Submission for the 2006 24-Hour $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to disapprove the portion of North Carolina's September 21, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Additionally, EPA is responding to comments received on EPA's January 26, 2011, proposed disapproval of the aforementioned portion of North Carolina's September 21, 2009, submission. On September 21, 2009, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), provided a letter to EPA certifying that North Carolina's state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ 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. The effect of today's action will be the promulgation of a Federal Implementation Plan (FIP) for North Carolina no later than two years from the date of disapproval. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for North Carolina.

DATES: *Effective Date:* This rule will be effective August 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–1015. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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