

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 28, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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 P—Indiana**

- 2. Section 52.776 is amended by adding paragraph (u), to read as follows:

**§ 52.776 Control strategy: Particulate matter.**

\* \* \* \* \*

(u) *Disapproval.* EPA is disapproving the portions of Indiana's Infrastructure SIP for the 2006 24-hour PM<sub>2.5</sub> NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

**Subpart KK—Ohio**

- 3. Section 52.1880 is amended by adding paragraph (l), to read as follows:

**§ 52.1880 Control strategy: Particulate matter.**

\* \* \* \* \*

(l) *Disapproval.* EPA is disapproving the portions of Ohio's Infrastructure SIP for the 2006 24-hour PM<sub>2.5</sub> NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

[FR Doc. 2011-17739 Filed 7-19-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-HQ-OAR-2011-0338; FRL-9435-7]

**Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the 2006 National Ambient Air Quality Standards for Fine Particulate Matter**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is finding that Tennessee has failed to submit a State Implementation Plan (SIP) to satisfy the requirements of the Clean Air

Act (CAA) with respect to the 2006 24-hour National Ambient Air Quality Standards (NAAQS) for fine particulate matter (24-hour PM<sub>2.5</sub>). Although Tennessee has submitted a SIP to address the requirements, the state subsequently withdrew that portion of its SIP submittal because it relied on the Clean Air Interstate Rule to address transport. This finding creates a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA. In a separate action, commonly referred to as the Transport Rule, EPA is finalizing a FIP for Tennessee to address these requirements.

**DATES:** The effective date of this rule is August 19, 2011.

**FOR FURTHER INFORMATION CONTACT:**

General questions concerning this final rule should be addressed to Edgar Mercado, Office of Atmospheric Programs, Clean Air Markets Division, 2400 Pennsylvania Avenue, Mail Code 6204J, Washington, DC 20460; telephone (202) 343-9440; *e-mail address:* mercado.edgar@epa.gov.

**SUPPLEMENTARY INFORMATION:** For questions related to Tennessee, please contact Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303.

**Table of Contents**

- I. Background
- II. This Action
- III. Statutory and Executive Order Reviews
  - A. Notice and Comment Under the Administrative Procedures Act (APA)
  - B. Executive Order 12866: Regulatory Planning and Review
  - C. Paperwork Reduction Act
  - D. Regulatory Flexibility Act
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13132 (Federalism)
  - G. Executive Order 13175
  - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - J. National Technology Transfer and Advancement Act
  - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - L. Congressional Review Act
  - M. Judicial Review

**I. Background**

On October 17, 2006, EPA published a final rule revising the 24-hour standard for fine particulate matter (PM<sub>2.5</sub>) from 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35µg/m<sup>3</sup>. Section 110(a)(1) of the CAA requires states to

submit revised SIPs that provide for the implementation, maintenance, and enforcement of a new or revised standard within 3 years after promulgation of such standard, or within such shorter period as EPA may prescribe. Section 110(a)(2)(D)(i) contains four elements that revised SIPs must address. This findings notice addresses the first two elements which require each state to submit SIPs which contain adequate provisions to prohibit air pollution within the state that (1) contributes significantly to another state's nonattainment of the NAAQS; or (2) interferes with another state's maintenance of the NAAQS. Section 110(a)(1) imposes the obligation upon states to make a SIP submission for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission.

States were required to have submitted complete SIPs that addressed the section 110(a)(2)(D)(i)(I) requirement related to interstate transport for the 2006 24-hour PM<sub>2.5</sub> NAAQS by September 21, 2009. On June 9, 2010, in a separate final rulemaking (75 FR 32763), EPA found that 29 states and territories had not made a SIP submittal that addressed this requirement. Although Tennessee has submitted a SIP intended to address the Section 110(a)(2)(D)(i) requirements, the state subsequently withdrew the Section 110(a)(2)(D)(i) of its infrastructure SIP with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS on December 2, 2010, because it relied on the Clean Air Interstate Rule. Although deficient to address the transport of pollution as highlighted in recent EPA air quality modeling to support the final Transport Rule, EPA acknowledges the State's efforts in making this SIP submittal. In response to Tennessee's withdrawal of the 110(a)(2)(D)(i)(I) portions of its SIP because it relied on the Clean Air Interstate Rule, EPA is making a finding that Tennessee has failed to submit the required infrastructure SIP elements with respect to nonattainment or interference with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS. In accordance with Section 110(c)(1), this finding creates a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA unless, prior to promulgation of a FIP, the state makes a submission to meet and EPA approves such submission as meeting the attainment and

maintenance requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The State's SIP submittal to address other portions of Section 110(a)(2)(D)(i) will be addressed in a separate rulemaking.

This action does not result in sanctions pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas, or to a SIP Call pursuant to section 110(k)(5).

## II. This Action

By this action, EPA is making the finding that Tennessee has failed to submit a SIP that addresses the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the revised 2006 24-hour PM<sub>2.5</sub> NAAQS. This finding creates a 2-year deadline for the promulgation of a FIP by EPA for Tennessee unless the State submits a SIP to satisfy these section 110(a)(2)(D)(i)(I) requirements, and EPA approves such submission prior to promulgation of a FIP.

## III. Statutory and Executive Order Reviews

### A. Notice and Comment Under the Administrative Procedures Act (APA)

This is a final EPA action, which is subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). However, EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no significant EPA judgment is involved in making a finding of failure to submit SIPs or elements of SIPs required by the CAA, where states have made no submissions to meet the requirement by the statutory deadline.

### B. Executive Order 12866: Regulatory Planning and Review

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

### C. 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.* Burden is defined at 5 CFR 1320.3(b). This action relates to the requirement in the CAA for states to submit SIPs under section 110(a)(1) that implements the CAA requirements for the revised 24-hour PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a

new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The present final action does not establish any new information collection requirement apart from that required by law.

### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR, part 121); (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 independently owned and operated is not dominate in its field.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, *Michigan v. EPA*, 213 F.3d 663, 668–69 (DC Cir., 2000), cert. den., 532 U.S. 903 (2001). This rule would not establish requirements applicable to small entities. Instead, it would require states to develop, adopt, and submit SIPs to meet the requirements of section 110(a)(2)(D)(i), and would leave to the states the task of determining how to meet those requirements, including which entities to regulate. Moreover, because affected states would have discretion to choose the sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not predict the effect of the rule on small entities. After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In addition, although the action is subject to the Administrative Procedures Act, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b); therefore, it is not subject to the notice and comment requirement.

### E. 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. The action implements mandate(s) specifically and explicitly set forth by the Congress in CAA section 110(a)(2)(D)(i)(I) without the exercise of any policy discretion by EPA.

This action does not create any additional requirements beyond those of the 2006 24-hour PM<sub>2.5</sub> NAAQS (71 FR 61144, October 17, 2006). Therefore, no UMRA analysis is needed. This rule responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2) of the CAA for the 2006 24-hour PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS within 3 years of promulgation of such standard, or shorter period as EPA may provide. This action does not impose any requirements beyond those specified in the Act.

Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action will not modify the relationship of the states and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this action.

### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2) of the CAA for the

2006 24-hour PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The CAA provides for states and tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of states and tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) gives tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the tribe whether to develop these programs and which programs, or appropriate elements of a program, the tribe will adopt.

This action does not have tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian tribes, because no tribe has implemented an air quality management program related to the 2006 24-hour PM<sub>2.5</sub> NAAQS at this time. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and Tribes in developing plans to attain the NAAQS, and this action does nothing to modify that relationship. Because this action does not have tribal implications, Executive Order 13175 does not apply.

#### *H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 2006 24-hour PM<sub>2.5</sub> NAAQS on children. The results of this risk assessment are contained in the final rule for 24-hour PM<sub>2.5</sub> NAAQS (71 FR 61144, October 17, 2006).

#### *I. Executive Order 13211: Actions Concerning Regulations 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.

#### *J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 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.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 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 final action. This action responds to the requirement in the CAA for states to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. EPA is merely determining whether Tennessee has complied with this statutory requirement.

#### *L. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of August 19, 2011. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the action in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 808(2).

#### *M. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the EPA action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

The Administrator is determining that this action making a finding of failure to submit SIPs related to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that an action is of “nationwide scope or effect” would be appropriate for any action that has “scope or effect beyond a single judicial circuit.” H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the finding of failure to submit a SIP applies to a rulemaking of national scope and effect. In these circumstances, section 307(b)(1)

and its legislative history call for the Administrator to find the rule to be of “nationwide scope or effect” and for venue to be in the District of Columbia Circuit.

Thus, any petitions for review of this action related to a finding of failure to submit SIPs related to the requirements of section 110(a)(2)(D)(i)(I) of the CAA must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

#### List of Subjects in 40 CFR Part 52

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

Dated: July 1, 2011.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2011-17738 Filed 7-19-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0460; FRL-9438-6]

#### Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing both an approval and a limited approval and limited disapproval of permitting rules submitted for the Sacramento Metropolitan Air Quality Management District (SMAQMD or District) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on May 19, 2011 and concern New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permit programs for new and modified major stationary sources of air pollution. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA).

**DATES:** *Effective Date:* This rule is effective on August 19, 2011.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2011-0460 for

this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

Laura Yannayon, EPA Region IX, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

#### Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

#### I. Proposed Action

On May 19, 2011 (76 FR 28942), EPA proposed to approve the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SMAQMD .....	203	Prevention of Significant Deterioration .....	1/27/11	1/28/11

We proposed to approve this rule because we determined that it complied with the applicable CAA requirements. Our proposed rule and related Technical Support Document (TSD)

contain more information on the basis for this rulemaking and on our evaluation of the submittal.

On May 19, 2011 (76 FR 28942), EPA also proposed a limited approval and

limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SMAQMD .....	214	Federal New Source Review .....	10/28/10	12/07/10

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the applicable CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not satisfy the requirements of section 110 and part D of the CAA.

Specifically:

- The rule is missing definitions for the terms “begin actual construction,” “federally enforceable” and “necessary preconstruction approvals or permits.”

- The rule is missing adequate public notice requirements for minor sources.

- The rule is missing provisions meeting the requirements of 40 CFR 51.165(a)(5)(ii) and 40 CFR 51.307(b)(2).

- The rule contains a cross reference to Rule 207—Title V—Federal Operating Permit Program, which is not SIP approved.

Our proposed rule and related TSD contain more information on the basis for this rulemaking and on our evaluation of the submittal.

#### II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

#### III. EPA Action

No comments were submitted that change our assessment that the submitted SMAQMD Rule 203 complies with the applicable CAA requirements. Therefore, under CAA section 110(k)(3) and for the reasons set forth in our May 19, 2011 proposed rule, we are finalizing a full approval of Rule 203.