

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 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 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.

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

Environmental protection, Air pollution control, Intergovernmental

relations, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 14, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

[FR Doc. 2011–1628 Filed 1–25–11; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2010–1015–201067; FRL–9257–4]

**Approval and Promulgation of Air Quality Implementation Plan; North Carolina; Disapproval of Interstate Transport Submission for the 2006 24-Hour PM<sub>2.5</sub> Standard**

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

**ACTION:** Proposed rule.

**SUMMARY:** 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 with certification that North Carolina’s state implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) 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 North Carolina’s September 21, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1015 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [benjamin.lynnora@epa.gov](mailto:benjamin.lynnora@epa.gov).
3. Fax: (404) 562–9019.
4. Mail: EPA–R04–OAR–2010–1015, 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-2010-1015." 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](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 [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 North Carolina 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](mailto:farngalo.zuri@epa.gov). For information regarding the PM<sub>2.5</sub> 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](mailto:scofield.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

- I. What action is EPA proposing in today's notice?
- II. What is the background for this proposed action?
- III. What is EPA's analysis of North Carolina's submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

#### **I. What action is EPA proposing in today's notice?**

On September 21, 2009, the State of North Carolina, through NC DENR, provided a letter to EPA with certification that the North Carolina SIP meets the interstate transport requirements with regard to the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>1</sup> Specifically,

<sup>1</sup> North Carolina's September 21, 2009, certification letter also explained that North Carolina's current SIP sufficiently addresses other requirements of section 110(a)(2) for the 2006 24-hour PM<sub>2.5</sub> NAAQS, however, today's proposed action only relates to the section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA will address the other section 110(a)(2)

North Carolina certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> 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<sub>2.5</sub> NAAQS) in any other state. In today's action, EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission related to interstate transport for the 2006 24-hour PM<sub>2.5</sub> NAAQS because EPA has made the preliminary determination that this submission does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

#### **II. What is the background for this proposed action?**

On December 18, 2006, EPA revised the 24-hour average PM<sub>2.5</sub> primary and secondary NAAQS from 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ . 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.<sup>2</sup> 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 in sections 110(k)(3) of the Act, where portions of the state submittals are severable, within that 12 month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS in relation to North Carolina's SIP in rulemaking separate from today's proposed rulemaking.

<sup>2</sup> The rule for the revised PM<sub>2.5</sub> 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.

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.

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<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance). EPA developed the 2006 PM<sub>2.5</sub> NAAQS Infrastructure 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<sub>2.5</sub> NAAQS.

As identified in the 2006 PM<sub>2.5</sub> 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 statute. 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<sub>2.5</sub> 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 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<sub>2.5</sub> 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 must 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<sub>2.5</sub> 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<sub>2.5</sub> NAAQS because CAIR does not address this NAAQS. Recognizing that the demonstration required may be a challenging task for the affected states, EPA also noted in the 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance the Agency’s intention to complete a rule to address interstate pollution transport in the eastern half of the continental United States.

EPA promulgated CAIR on May 12, 2005 (see 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 PM<sub>2.5</sub> and/or ozone NAAQS 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<sub>2.5</sub> 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 (D.C. Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (D.C. 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 (D.C. 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)(I), the “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone” (Transport Rule).<sup>3</sup> As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(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<sub>2.5</sub> NAAQS by other states. The modeling performed for the proposed Transport Rule shows that North Carolina significantly contributes to nonattainment or interferes with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in downwind areas.

### III. What is EPA’s analysis of North Carolina’s submission for section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS?

On September 21, 2009, the State of North Carolina, through NC DENR, provided a letter to EPA with certification that North Carolina’s SIP meets the interstate transport requirements with regard to the 2006 24-hour PM<sub>2.5</sub> NAAQS. In its submission, North Carolina refers to their May 25, 2007, submittal and states that North Carolina’s 110(a)(2)(D)(i)(I) requirements are addressed through several regulations and legislation, including 15A NCAC 2D .2400 “*Clean Air Interstate Rules*” and the 2002 North Carolina Clean Smokestacks Act (CSA), Session Law 2002–4, NCGS 143–215.107D. North Carolina’s May 25, 2007, submittal addresses the “significant contribution” and “interference with maintenance” requirements of 110(a)(2)(D)(i)(I) by relying on North Carolina’s CAIR SIP.<sup>4</sup> Contrary to the 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance explicitly noting that reliance on CAIR cannot be used to comply with section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS, North Carolina’s submission

<sup>3</sup> See “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule,” 75 FR 45210 (August 2, 2010).

<sup>4</sup> North Carolina explains that their May 25, 2007, submittal is in response to EPA’s April 25, 2005, finding of failure to submit a plan to address interstate transport of pollutants that form ozone and particle pollution. EPA notes that the April 25, 2005, finding only addresses the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS.

indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 PM<sub>2.5</sub> NAAQS in part by virtue of its approved North Carolina CAIR SIP. CAIR was promulgated before the 24-hour PM<sub>2.5</sub> NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 PM<sub>2.5</sub> NAAQS.<sup>5</sup> Because North Carolina's submission relies on CAIR to address the requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 PM<sub>2.5</sub> NAAQS while CAIR does not address that 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<sub>2.5</sub> NAAQS. However, states will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and will not remain in force permanently. EPA is in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For this reason, EPA cannot approve North Carolina's SIP submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

Furthermore, EPA's 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance directed that a state's submission pertaining to the requirement of section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis. Additionally, EPA recommended the various types of information that could be relevant to support the state's submission. While North Carolina did refer to the 2002 North Carolina CSA in its submission, it did not further evaluate or demonstrate with a technical analysis that this measure and their intention to rely to the North Carolina CAIR SIP addresses the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I) as directed by the guidance.

The modeling conducted by EPA for the proposed Transport Rule demonstrates that emissions from North Carolina significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in downwind areas. Specifically, EPA's analysis shows that

North Carolina contributes to eleven counties containing downwind 24-hour PM<sub>2.5</sub> nonattainment sites and three counties containing downwind 24-hour PM<sub>2.5</sub> maintenance sites.

While North Carolina's submittal indicates that its current SIP sufficiently addresses the 110(a)(2)(D)(i)(I) obligations with respect to the 2006 PM<sub>2.5</sub> NAAQS in part by virtue of the CSA and its approved CAIR SIP, EPA has made the preliminary determination that North Carolina's current SIP does not meet the 110(a)(2)(D)(i)(I) requirements with respect to the 2006 PM<sub>2.5</sub> NAAQS. As mentioned above, North Carolina did not provide sufficient analysis to demonstrate to address the "significant contribution" and "interference with maintenance" requirements of 110(a)(2)(D)(i)(I). As for CAIR, this rule was promulgated before the 24-hour PM<sub>2.5</sub> NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 PM<sub>2.5</sub> NAAQS.<sup>6</sup> Based upon our evaluation, EPA is proposing to disapprove North Carolina's certification that its SIP meets the requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 PM<sub>2.5</sub> NAAQS. The submitted provisions are severable from each other. Therefore, 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.

#### IV. Proposed Action

EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), because EPA has made the preliminary determination that North Carolina SIP does not satisfy these requirements for the 2006 PM<sub>2.5</sub> NAAQS. Although EPA is proposing to disapprove the portion of North Carolina's September 21, 2009, submission, relating to section 110(a)(2)(D)(i)(I), EPA does acknowledge the State's efforts to address this requirement in its September 21, 2009, submission. Unfortunately, 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 PM<sub>2.5</sub> NAAQS. The purpose of the Federal 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<sub>2.5</sub> NAAQS for the affected states. EPA is not proposing to take any action on the remaining elements of the submission, including the section 110 infrastructure, and section 110(a)(2)(D)(i)(II) portion regarding interference with measures required in the applicable SIP for another state designed to prevention of 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. 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(D)(i)(I) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger 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 Federal Transport Rule, when final, is the FIP that EPA intends to implement to satisfy the 110(a)(2)(D)(i)(I) requirement for North Carolina for the 2006 PM<sub>2.5</sub> NAAQS.

#### 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 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

<sup>5</sup> Further, as explained above and in the Transport Rule proposal, the D.C. 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.

<sup>6</sup> Further, as explained above and in the Transport Rule proposal (75 FR 45210,) the D.C. 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.

Act, 44 U.S.C. 3501 *et seq.*, because this proposed 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 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 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 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 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 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 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.

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

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

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

Dated: January 14, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

[FR Doc. 2011-1625 Filed 1-25-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-1014-201065; FRL-9257-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Disapproval of Interstate Transport Submission for the 2006 24-Hour PM<sub>2.5</sub> Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** On September 8, 2009, Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), provided a letter to EPA with certification that Kentucky's State implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour particulate matter (PM<sub>2.5</sub>) 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 Kentucky's September 8, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-1014 by one of the following methods:

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

2. *E-mail*: [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).

3. *Fax*: (404) 562-9019.

4. *Mail*: EPA-R04-OAR-2010-1014, 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. Lynora 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-2010-1014." 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://](http://www.regulations.gov)

[www.regulations.gov](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 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 Kentucky 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](mailto:farngalo.zuri@epa.gov). For information regarding the PM<sub>2.5</sub> 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](mailto:scofield.steve@epa.gov).