

INTERSTATE TRANSPORT STATE IMPLEMENTATION PLAN ELEMENT

**TO SATISFY THE REQUIREMENTS OF
THE CLEAN AIR ACT § 110(a)(2)(D)(i)**

**CITY OF ALBUQUERQUE-BERNALILLO COUNTY
NEW MEXICO**

FINAL VERSION

City of Albuquerque Environmental Health Department
Air Quality Division
Control Strategies Section

Reviewed and Adopted after Public Hearing by:

Albuquerque-Bernalillo County
Air Quality Control Board (AQCB)

On

September 12, 2007

Mr. Jens Deichmann, AQCB Chair

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CHAPTER 1: INTRODUCTION

1.1 Overview

On July 18, 1997, the U.S. Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for 8-hour ozone and particulate matter 2.5 microns or less in diameter (PM_{2.5}) [62 FR 1 & 62 FR 38652 respectively, both effective 9/16/97].. Section 110(a)(1) of the Clean Air Act (CAA) requires states to submit state implementation plans (SIPs) within 3 years following the promulgation of new standards. Implementation of the standards was delayed, however, due to subsequent litigation. On March 10, 2005, EPA entered into a Consent Decree with Environmental Defense and American Lung Association (ED/ALA) to address the interstate transport of these pollutants, a required SIP component, under CAA Section 110(a)(2)(D)(i) and on April 25, 2005, published a "Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM 2.5" (70 FR 21147). The April 25, 2005, finding, effective May 25, 2005, started a 24-month clock for EPA to either issue a final Federal Implementation Plan (FIP) to address the requirements of Section 110(a)(2)(D)(i) or to approve a SIP that addresses these requirements.

This document is a revision to the New Mexico State Implementation Plan for Air Quality (SIP) to address interstate transport of air pollution under CAA Section 110(a)(2)(D)(i). It contains a demonstration showing that New Mexico (including Bernalillo County) does not significantly contribute to interstate transport of pollutants that impact nonattainment in, or interfere with maintenance by, any other state with respect to the 8-hour ozone and PM_{2.5} NAAQS and demonstrates that Bernalillo County meets the required prevention of significant deterioration of air quality and protection of visibility provisions of the law.

1.2 Jurisdiction:

For air quality purposes, Bernalillo County operates the same way as a state. The EPA treats and funds Bernalillo County as it does other states. Enacted in 1967, the New Mexico Air Quality Control Act [NM STAT ANN § § 74-2-1 through 74-2-17] allowed for the establishment of the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) as a local board and gave it authority to administer and enforce its air quality regulations within the Bernalillo County boundaries.

The AQCB has air quality jurisdiction over all of Bernalillo County, which encompasses all of the City of Albuquerque. The State of New Mexico Environmental Improvement Board (EIB) has jurisdiction over all counties in New Mexico except Bernalillo County. The City of Albuquerque Environmental Health Department, Air Quality Division (AQD) administers and staffs the air quality program for Bernalillo County. The term Department, as used in this document, refers to the Albuquerque Environmental Health Department.

1.3 General SIP Requirements

Section 110(a)(2)(D)(i) of the Clean Air Act requires each state to submit a SIP that prohibits emissions which adversely affect another state. The SIPs must contain adequate provisions –

“prohibiting...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...national primary or secondary air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other state... to prevent significant deterioration of air quality or to protect visibility.”

On August 15, 2006, EPA issued guidance for states to use as they developed SIPs to meet their outstanding obligations under CAA Section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} NAAQS (see Appendix A). The guidance outlines the four elements states should address in their SIPs:

- 1) “significant contribution to nonattainment,”
- 2) “interference with maintenance,”
- 3) “prevention of significant deterioration,” and
- 4) “protection of visibility.”

Chapters 2 through 4 present data and information, as suggested in EPA’s guidance, that demonstrate New Mexico (including Bernalillo County) meets the interstate transport requirements of Section 110(a)(2)(D)(i).

CHAPTER 2: ANALYSIS OF NONATTAINMENT AND MAINTENANCE AREA IMPACTS

In the preamble to its *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone* (Interstate Air Quality Rule), also known as “CAIR” [69 FR 4581, January 30, 2004], EPA provided the following rationale for the exclusion of the Western U.S., including New Mexico (including Bernalillo County), from further consideration of transport for both 8-hour ozone and PM_{2.5} and the requirements of CAIR.

“In analyzing significant contribution to nonattainment, we determined it was reasonable to exclude the Western U.S., including the States of Washington, Idaho, Oregon, California, Nevada, Utah and Arizona from further analysis due to geography, meteorology, and topography. Based on these factors, we concluded that the PM_{2.5} and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these States’ boundaries. Therefore, for the purpose of assessing State’s contributions to nonattainment in other States, we have only analyzed the nonattainment counties located in the rest of the U.S.”

EPA’s August 15, 2006, guidance states “the EPA anticipates, based upon existing information developed in connection with the CAIR, that emissions from sources in states not covered by the CAIR do not contribute significantly to nonattainment or interfere with maintenance of the 8-hour ozone or PM_{2.5} NAAQS in any other State.” The guidance indicates that to satisfy the requirements of Section 110(a)(2)(D)(i), non-CAIR states may submit a negative declaration that the state does not significantly contribute to interstate transport of emissions impacting

nonattainment or interfere with maintenance of the NAAQS in another state. Information to support a negative declaration may include but is not limited to the following:

- emission inventories for sources that contribute to ambient ozone and PM_{2.5} levels;
- meteorological data;
- information about the distance to the nearest 8-hour ozone or PM_{2.5} nonattainment area in another state; and
- air quality modeling.

As detailed in Sections 2.1 and 2.2, the Albuquerque Environmental Health Department (Department) used these and other factors in developing its demonstration of noninterference for the 8-hour ozone and PM_{2.5} air quality standards.

2.1 8-Hour Ozone

To assist the State of New Mexico and Bernalillo County in providing a technical analysis to base the determination of transport impacts from ozone and ozone-precursors, EPA Regions 6 and 7 collaborated on modeling specific to New Mexico (including Bernalillo County). The modeling metrics used were developed by EPA and results showed that New Mexico (including Bernalillo County) does not contribute significantly to downwind nonattainment to existing 8-hour ozone nonattainment and maintenance areas in the Central United States ¹ The nearest non-attainment area for ozone is the Phoenix-Mesa area in Arizona.

Conclusion

“The final Clean Air Interstate Rule covers 28 eastern states and the District of Columbia. Air emissions in these states contribute to unhealthy levels of ground-level ozone, fine particles or both in downwind states. Several states are not included in the CAIR region because *they do not contribute to downwind nonattainment*. These states include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, **New Mexico**, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington and Wyoming”. ²

As presented in this SIP revision and EPA documentation from CAIR records, the location of emissions sources, monitored air quality data, topography and meteorology, and distance to downwind nonattainment areas, all demonstrate that ozone and ozone precursor emissions from New Mexico (including Bernalillo County) do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone standard in any other state. The Department commits to continue to review available information regarding monitored air quality, existing and projected emissions, and modeled air quality and to take whatever actions may be necessary to ensure that emissions activities within Bernalillo County do not contribute significantly to nonattainment in, or interfere with maintenance by, other states with respect to any primary or secondary NAAQS.

¹ See 110 (a)(2)(d)(i) Modeling Technical Support Document

² See <http://www.epa.gov/interstateairquality/not-covered.html> (Emphasis added).

2.2 PM_{2.5}

Designation

New Mexico (including Bernalillo County) is designated as unclassifiable/attainment for PM_{2.5} [40 CFR 81.332]

Modeling

For the CAIR Notice of Proposed Rulemaking, EPA modeled PM_{2.5} emissions to determine which, if any, Western states significantly contributed to interstate transport affecting nonattainment in an adjacent state. The modeling showed that the westernmost states, including New Mexico (including Bernalillo County), did not make contributions above the significance threshold. EPA stated in its *Corrected Response To Significant Public Comments On the Proposed Clean Air Interstate Rule (March 2005, Corrected April 2005, Document ID No. EPA-HQ-OAR-2003-0053-2172, pages 200-201)*:

“Regarding modeling of all States, in the PM_{2.5} modeling for the NPRM, we modeled 41 States, and found that the westernmost of these States made very small contributions to nonattainment in any other State.³ For the revised modeling for the final rule, we reduced the set of States modeled [to 37 for PM] for reasons of efficiency.⁴ The results again *showed that the westernmost States modeled did not make contributions above the significance threshold, indicating that had other even more western States been modeled they also would not have done so.*”

Therefore, according to EPA’s CAIR analysis, emissions from New Mexico (including Bernalillo County), do not affect PM_{2.5} NAAQS non-attainment in other states. The nearest PM_{2.5} non-attainment area is located in Libby, Montana.

Conclusion

As presented in this SIP revision and EPA documentation from CAIR records, the location of emissions sources, monitored air quality data, topography and meteorology, distance to downwind nonattainment areas, and air quality modeling all demonstrate that PM_{2.5} and PM_{2.5} precursor emissions from New Mexico (including Bernalillo County) do not significantly contribute to nonattainment or interfere with maintenance of the PM_{2.5} standards in any other

³ The nine westernmost states that were not modeled for the NPRM are Idaho, Washington, Oregon, Nevada, California, Utah, Nevada, Alaska, and Hawaii

⁴ The additional four states not modeled for the final rule are Montana, Wyoming, Colorado, and *New Mexico*.

state. The Department commits to continue to review available information regarding monitored air quality, existing and projected emissions, and modeled air quality and to take whatever actions may be necessary to ensure that emissions activities within Bernalillo County do not contribute significantly to nonattainment in, or interfere with maintenance by, other states with respect to any primary or secondary NAAQS.

CHAPTER 3: PREVENTION OF SIGNIFICANT DETERIORATION

Section 110(a)(2)(D)(i)(II) of the CAA requires states to prohibit emissions within the state from interfering with implementation plans from other states falling under Part C of Section 110 to prevent significant deterioration of air quality.

EPA's Section 110(a)(2)(D)(i) guidance, issued on August 15, 2006, included the following provisions regarding prevention of significant deterioration:

“For the 8-hour ozone standard, each State only needs to make a SIP submission that confirms that major sources in the State are currently subject to PSD and NNSR permitting programs that apply to the 8-hour ozone standard and that SIP-approved States are on track to meet the June 15, 2007 deadline for SIP submissions adopting requirements of the Phase II ozone implementation rule.

For the PM 2.5 standard, States need only provide a SIP submission that confirms that major sources in the State are subject for PSD and NNSR permitting programs implemented in accordance with EPA's interim guidance calling for use of PM-10 as a surrogate for PM-2.5 in the PSD and NNSR programs.”

Bernalillo County has a fully-approved PSD and NNSR program. Bernalillo County's rules were revised to be consistent with the federal PSD and NNSR revised regulations, which were promulgated by EPA on December 31, 2002, [67 FR 80186], and reconsidered with minor changes on November 7, 2003, [68 FR 63021], (collectively, the “2002 New Source Review (NSR) Reform rules”). The revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements.

20.11.60 NMAC, *Permitting in Nonattainment Areas* and 20.11.61 NMAC, *Prevention of Significant Deterioration*, were repealed and replaced by the AQCB on 12/14/05 and became locally effective on 1/23/06. A typo was corrected in 20.11.61 NMAC on 4/12/06, and became effective locally on 5/15/06. EPA approved these changes on 4/26/07 [FR Vol. 72, No. 80, 20728-20730], which became federally effective on 5/29/07.

CHAPTER 4: PROTECTION OF VISIBILITY

Section 110(a)(2)(D)(i)(II) contains a requirement for states to prohibit emissions that interfere with plans from other states that protect visibility. In 1980, EPA issued regulations requiring states to address reasonably attributable visibility impairment (RAVI). EPA's guidance for Section 110(a)(2)(D)(i) issued on August 15, 2006, states the following regarding RAVI:

“At this point in time, EPA has made no determination that emissions from any State interfere with measures required to be included in a plan to address reasonably attributable visibility impairment. Further, EPA is not aware of any certification of existing reasonably attributable impairment of visibility by a Federal Land manager that has not already been resolved. The EPA accordingly believes that States should be able to make a relatively simple SIP submission verifying that no source within the State emits pollutants that interfere with measures included in the visibility SIPs under the 1980 regulations.”⁵

Based on the conclusions stated by EPA in the above cited guidance, the Department concludes that there are no sources of emissions within New Mexico or Bernalillo County that interfere with implementation of RAVI SIPs in other states.

In 1999, EPA promulgated the first of a series of rules governing the “regional haze” aspect of visibility impairment. Because states are not required to submit Regional Haze SIPs until December 2007, it is probably too early to assess the impact of transported pollution on visibility in federally protected areas.

EPA guidance states that:

EPA believes that it is currently premature to determine whether or not State SIPs for 8-hour ozone or PM_{2.5} contain adequate provisions to prohibit emissions that interfere with measures in other States' SIPs designed to address regional haze. Accordingly, EPA believes that States may make a simple SIP submission confirming that it is not possible at this time to assess whether there is any interference with measures in the applicable SIP for another State designed to “protect visibility” for the 8-hour ozone and PM_{2.5} NAAQS until regional haze SIPs are submitted and approved.⁶

⁵ Guidance for the State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour ozone and PM_{2.5} National Ambient Air Quality Standards, EPA, August 15, 2006, page 9.

⁶ Guidance for the State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour ozone and PM_{2.5} National Ambient Air Quality Standards, EPA, August 15, 2006, page 9-10.

The AQCB adopted its first Regional Haze SIP on November 12, 2003, which was subsequently submitted to EPA in December 2003. This Regional Haze SIP followed 40 CFR 51.309, which addressed reasonable progress in reducing impacts on Class I areas on the Colorado Plateau. While New Mexico's 2007 SIP update will analyze any impacts from New Mexico that extend beyond the Colorado Plateau and determine appropriate long-term strategies for control measures; Bernalillo County does not have any Class I Areas, and therefore will not address areas outside the Colorado Plateau, nor will additional control strategies be included in the 2007 AQCB Regional Haze SIP re-submittal.

CHAPTER 5: CONCLUSION

Based on the information and conclusions presented in this SIP submission, the Department has determined that Bernalillo County will not significantly contribute to nonattainment or interfere with maintenance of 8-hour ozone or PM_{2.5} NAAQS in any other state. In addition, Bernalillo County meets the PSD and protection of visibility requirements under CAA Section 110(a)(2)(D)(i).

Appendix A

Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards, U.S. Environmental Protection Agency, August 15, 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

AUG 15 2006

MEMORANDUM

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

SUBJECT: Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards

FROM: William T. Harnett, Director *William T. Harnett*
Air Quality Policy Division, OAQPS (C539-01)

TO: Regional Air Division Director, Regions I-X

The purpose of this memorandum is to provide guidance concerning the State implementation plan (SIP) submissions States should make to meet their currently outstanding obligations under section 110(a)(2)(D)(i).

The Environmental Protection Agency (EPA) has previously indicated through rulemaking what States affected by the Clean Air Interstate Rule (CAIR) must do concerning emissions that significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone or fine particulates (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) in another State. This guidance, therefore, addresses what States that are not affected by the CAIR should consider in meeting the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i), and what all States (inside or outside the CAIR region) should consider with respect to making submissions to meet the "prevention of significant deterioration" and "protect visibility" requirements of section 110(a)(2)(D)(i). Because the CAIR region differs for purposes of 8-hour ozone and PM_{2.5}, some States may be within the CAIR region for purposes of one NAAQS, but not the other, and should make section 110(a)(2)(D)(i) SIP submissions that account for this distinction.

On July 18, 1997, EPA promulgated NAAQS for ozone and for fine particulate matter. Section 110(a)(1) of the Clean Air Act requires States to submit new SIPs to provide for the implementation, maintenance, and enforcement of new or revised NAAQS. Section 110(a)(2) lists the elements that the new SIP submissions must contain. Among other things, SIPs for new or revised NAAQS must contain adequate provisions to address interstate transport of air pollution, pursuant to section 110(a)(2)(D)(i).

Section 110(a)(1) explicitly provides that States must adopt and submit to the EPA Administrator new SIP submissions within 3 years after the promulgation of a new or revised NAAQS, meeting the provisions of 110(a)(2), as applicable. Therefore, States should have submitted SIPs to EPA for the 8-hour ozone NAAQS and the PM_{2.5} NAAQS by no later than July 2000. However, at this time no State has submitted a new SIP. We recognize that litigation over both the 8-hour ozone NAAQS and the PM_{2.5} NAAQS created substantial uncertainty as to how to proceed. Moreover, in the case of PM_{2.5}, additional time was needed for creation of a monitoring network, collection of at least three years of data, and analysis of those data.

On April 25, 2005, EPA published an action in the Federal Register making a finding that States had failed to make statutorily required SIP submissions for the 8-hour ozone and PM_{2.5} NAAQS. The EPA explicitly limited this finding of failure to submit to the requirements of section 110(a)(2)(D)(i) pertaining to interstate transport. The finding of failure to submit action started a 24-month clock for EPA to issue a final Federal Implementation Plan (FIP) to meet the requirements of section 110(a)(2)(D)(i), for both the 8-hour ozone and PM_{2.5} standards, unless EPA instead approves a State SIP submission to meet those requirements in advance of that date.

The finding of failure to submit SIPs addressing section 110(a)(2)(D)(i) is the first action required under a Consent Decree between EPA and plaintiffs who sued the Agency for failure to take action to require the submission of new SIPs for the 8-hour ozone and PM_{2.5} NAAQS, or to issue FIPs in lieu thereof. The EPA has also committed in the Consent Decree to take later actions to determine whether States have submitted the remaining SIP elements required by section 110(a)(1) and (2) for the 8-hour ozone and PM_{2.5} NAAQS by no later than December 15, 2007, for ozone, and by no later than October 5, 2008, for PM_{2.5}. The Agency intends to provide States with additional information concerning the remaining section 110(a)(1) and (2) SIP elements, in separate regulations or guidance documents.

We emphasize that this document is merely guidance and that States or EPA may elect to follow or deviate from this guidance, as appropriate. The ultimate determination of whether a given SIP submission by a State meets the statutory requirements of section 110(a)(2)(D)(i) will be accomplished through case by case notice and comment rulemaking in which the facts and circumstances of each State submission will be evaluated by EPA. We ask that the EPA Regional Offices work with their respective States in the development of their SIP submissions.

If you have questions concerning this guidance, please contact Mr. Larry D. Wallace (919) 541-0906. Please ensure that the appropriate air agency officials for the States in your Region are made aware of this guidance.

Attachment

cc: Margo Oge, OTAQ
Steve Page, OAQPS
Brian McLean, OAP
Scott Mathias, AQPD
Kevin McLean, OGC
Barbara Driscoll, AQPD
Larry Wallace, AQPD
Kimber Scavo, AQPD
Geoffrey Wilcox, OGC
Norm Possiel, AQAD

**Guidance for State Implementation Plan Submissions to Meet Current Outstanding
Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5}
National Ambient Air Quality Standards**

1. Introduction:

This document provides guidance to States concerning State Implementation Plan (SIP) submissions that States must make pursuant to section 110(a)(2)(D)(i). The Environmental Protection Agency (EPA) emphasizes that this guidance document merely provides suggestions and that States or EPA may elect to follow or deviate from this guidance, as appropriate. The ultimate determination of whether a given SIP submission by a State meets the requirements of section 110(a)(2)(D)(i) will be accomplished by area specific notice and comment rulemaking in which the facts and circumstances of each State submission will be evaluated by EPA. Sections 110(a)(1) and (2) of the Clean Air Act (CAA), require States to submit SIPs that implement, maintain, and enforce a new or revised national ambient air quality standard (NAAQS) within 3 years following the promulgation of the standard.

In July 1997, EPA issued the 8-hour ozone and PM_{2.5} NAAQS. States were thus required to submit SIPs that satisfy the applicable CAA requirements under section 110(a)(1) and (2) for these NAAQS by July 2000. Among the SIP elements identified in section 110(a)(2) is the requirement to address interstate transport of pollutants pursuant to section 110(a)(2)(D)(i). The EPA has determined that section 110(a)(2)(D)(i) is among the SIP requirements with which States must comply in accordance with the schedule of section 110(a)(1).¹

On April 25, 2005, EPA notified States of their failure to make the required SIP submission addressing interstate transport of pollutants related to ozone and PM_{2.5} in downwind States.²

Pursuant to section 110(c), EPA's April 25, 2005 finding of failure to submit started a 24-month clock for EPA to issue a final Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D)(i), unless a State makes the required submission and EPA approves such submission within that 24-month period. The 24-month FIP clock began on

¹See, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25,162 at 25,263-69 (May 12, 2005).

²See, "Finding of Failure to Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM 2.5," 70 FR 21,147 (April 25, 2005).

May 25, 2005, the effective date of the finding of failure to submit, and will end on May 25, 2007.

The EPA's finding of failure to submit SIPs that address section 110(a)(2)(D)(i) is the first action required under a Consent Decree.³ Under the Consent Decree, EPA is also obligated to make later determinations as to whether States have made the required SIP submissions to meet the remaining applicable requirements of section 110(a)(1) and (2). The EPA is obligated to make these later determinations by December 15, 2007, for SIP submissions for the 8-hour ozone NAAQS, and by October 5, 2008, for SIP submissions pertaining to the PM_{2.5} NAAQS.

The EPA believes that Section 110(a)(2)(D)(i) provides an important tool for attainment and maintenance of the NAAQS by addressing the problem of interstate transport of air pollutants. This provision applies to each pollutant covered by a NAAQS and to all areas of each State regardless of the attainment or nonattainment designation of such areas. Section 110(a)(2)(D)(i) specifically provides that each State's SIP must contain adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment of the NAAQS, or that interfere with maintenance of the NAAQS, in any other State. In addition, this section requires that each State's SIP must contain adequate provisions to prohibit emissions of air pollutants within the State that interfere with measures required to prevent significant deterioration of air quality or to protect visibility in any other State.

The EPA intends to provide additional information to States concerning the remaining section 110(a)(1) and (2) SIP elements, either in regulations implementing the 8-hour ozone or PM_{2.5} NAAQS, or in later guidance documents.

2. What is required under section 110(a)(2)(D)(i):

Section 110(a)(1) requires States to make a SIP submission for a new or revised NAAQS within 3 years of promulgation of such new or revised NAAQS.

Section 110(a)(2) lists the elements those SIPs must contain. For example, this section lists certain SIP infrastructure elements related to the new or revised standards such as requirements for provisions pertaining to modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the standards. An important SIP element

³The Consent Decree is between Environmental Defense and American Lung Association, as plaintiffs, and EPA, as defendant, signed March 10, 2005. The Consent Decree resolved the case entitled "Environmental Defense, et al. v. Johnson," No. 1:05CV00493(D.D.C.). EPA gave notice of, and took comment on, the proposed consent decree in accordance with CAA section 113(g). See, 70 FR 15,623 (March 28, 2005).

listed in section 110(a)(2) is the requirement that States address emissions that impact other States through interstate transport.

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. Each State must submit a SIP which contains adequate provisions:

prohibiting ... 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 ... national primary or secondary air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality or to protect visibility.

The EPA’s April 25, 2005 finding of failure to submit reflected EPA’s determination that States had not yet made SIP submissions for the 8-hour ozone and PM_{2.5} NAAQS necessary to meet the requirements of section 110(a)(2)(D)(i).

The precise nature and contents of such a submission is not stipulated in the statute. EPA believes that the contents of the SIP submission required by section 110(a)(2)(D)(i) may vary depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the State develops and submits a SIP for a new or revised NAAQS necessarily affects the content of the required submission. In some instances, this submission may be more detailed and substantive, as when existing data and analyses already provide the requisite information. In other instances, the submission may be more preliminary and simplified, as when there is currently insufficient information to support a determination that there are interstate transport impacts, or when other later regulatory actions are prerequisites to making such a determination.

The sections below provide guidance concerning the types of SIP submissions that EPA believes would be appropriate in response to the April 25, 2005, finding of failure to submit.

3. States subject to the Clean Air Interstate Rule:

In March of 2005, EPA promulgated the Clean Air Interstate Rule (CAIR).⁴ Based upon the requirements of section 110(a)(2)(D)(i), EPA determined in the CAIR that NO_x emissions from sources in 25 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the 8-hour ozone standard in other downwind States. The EPA also determined that SO₂ and NO_x emissions from sources in 23 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the PM_{2.5} standards in other downwind States. Subsequently, EPA determined that two additional States contribute to nonattainment and interfere with maintenance of the PM_{2.5} NAAQS.⁵ (See Attachment A listing the States subject to the CAIR).

In the CAIR, EPA concluded that the States will meet their section 110(a)(2)(D)(i) obligations to address the “significant contribution” and “interference with maintenance” requirements by complying with the CAIR requirements. Consequently, States within the CAIR region need not submit a separate SIP revision to satisfy the section 110(a)(2)(D)(i) requirements provided that they submit a SIP revision to satisfy CAIR.

Pursuant to section 110(a)(1), those States not within the CAIR region must also make a submission with respect to those two requirements. Also in accordance with the statute, all States, both inside and outside the CAIR region must make a submission with respect to the “prevention of significant deterioration” and “protect visibility” requirements of section 110(a)(2)(D)(i). It should be noted that because the CAIR region differs for purposes of ozone and PM_{2.5}, some States may be inside the CAIR region for purposes of one NAAQS, but outside the CAIR region for the other, and should make section 110(a)(2)(D)(i) SIP submissions that account for this distinction.

Accordingly, EPA has structured this guidance to address the different types of considerations that States may need to evaluate in making their respective submissions.

4. SIP Submissions from States pertaining to the “significant contribution” and “interfere with maintenance” requirements of section 110(a)(2)(D)(i):

States not covered by the CAIR must make a section 110(a)(2)(D)(i) SIP submission addressing significant contribution to nonattainment and interference with maintenance of the 8-hour ozone and PM_{2.5} NAAQS in any other States.

⁴See, supra note 1.

⁵See, Inclusion of Delaware and New Jersey in Clean Air Interstate Rule, 71 FR 25288 (April 28, 2006).

The EPA anticipates, based upon existing information developed in connection with the CAIR, that emissions from sources in States not covered by the CAIR do not contribute significantly to nonattainment or interfere with maintenance of the 8-hour ozone or PM_{2.5} NAAQS in any other State. Unless a State excluded from the CAIR has contrary information or analysis, EPA believes that such State should be able to make a relatively simple SIP submission verifying that the State does not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone or PM_{2.5} in another State. EPA believes that a negative declaration from each of the non-CAIR States, which certifies that the State in question does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another State, should be adequate to satisfy the requirements of section 110(a)(2)(D)(i).

States should submit a technical demonstration to support a negative declaration. EPA believes that this demonstration should contain the information which the State deems appropriate to support its claim that it does not significantly contribute to nonattainment or interfere with maintenance of the standards in another State. Suitable information might include, but is not be limited to, information concerning emissions in the State, meteorological conditions in the State, the distance to the nearest nonattainment area in another State, reliance on modeling conducted by EPA in determining that such State should not be included within the ambit of the CAIR, or such other information as the State considers probative on the issue of significant contribution and interference with maintenance. The EPA believes that it would be appropriate for States to make this assessment using considerations comparable to those used by EPA in evaluating significant contribution in the CAIR, e.g., assessing the impacts of emissions on nearby nonattainment areas as of the year 2010, and evaluating mitigation strategies based upon emissions reductions achievable through highly cost effective controls.

In addition, States that are not subject to the CAIR, but are subject to the NO_x SIP Call, may wish to indicate that SIPs submitted to meet the NO_x SIP Call should be sufficient to satisfy the section 110(a)(2)(D)(i) obligation for the 8-hour ozone NAAQS. EPA initially addressed interstate transport for ozone in the NO_x SIP Call rule published in 1998.⁶ The NO_x SIP Call is substantially reducing ozone transport, and is helping downwind areas meet the 8-hour ozone standards. The EPA believes that states outside the CAIR region that are meeting the NO_x SIP Call should not significantly be contributing to nonattainment or interfering with maintenance in any down wind state.

The EPA will assist each State to evaluate the available information and to develop a sufficient SIP submission and demonstration to meet this element of section 110(a)(2)(D)(i).

⁶ "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for the Purposes of Reducing Regional Transport of Ozone Rule, (63 FR 57356, October 27, 1998).

EPA will take action on the SIP submissions made by States through notice and comment rulemaking, thereby assuring that the requirements are met.

5. SIP Submissions from States pertaining to the “prevention of significant deterioration” requirement of section 110(a)(2)(D)(i):

Section 110(a)(2)(D)(i)(II) also contains a requirement for all States to submit SIPs that contain adequate provisions prohibiting “.... any source or other type of emission activity within the State from emitting any air pollutant in amounts which will - interfere with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality ...”

Under EPA regulations, each SIP must include a preconstruction review program for major sources to satisfy the requirements of section 110(a)(2)(D)(i) of the Act. 40 C.F.R. § 51.165(b)(1). In nonattainment areas, the preconstruction review program is known as Nonattainment New Source Review (NNSR) and in attainment areas, preconstruction review is part of the Prevention of Significant Deterioration (PSD) program. These programs require preconstruction permits to protect the air quality within each state and also serve to prohibit construction of new major sources and major modifications at existing major sources from contributing to nonattainment in adjacent states. The PSD permitting program is also the primary measure that each SIP must include to prevent significant deterioration of air quality in accordance with Title I, Part C and section 110(a)(2)(D)(i)(II) of the Act. See, 40 CFR § 51.166. Section 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions prohibiting sources or emissions activity within each state “from emitting any air pollutant in amounts which will -- ... interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality” 42 U.S.C. § 7410(a)(2)(D)(i)(II).

Because all areas are currently subject to some form of preconstruction permitting program for ozone and PM_{2.5}, it is not necessary, at this time, for States to make a SIP submission containing rule changes or modeling demonstrations in order to address section 110(a)(2)(D)(i)(II) for the 8-hour ozone and PM_{2.5} NAAQS. EPA has established or will establish schedules for SIP submissions that incorporate revisions to EPA’s preconstruction permitting regulations that are specific to the 8-hour ozone and PM_{2.5} NAAQS. Areas will need to revise their SIPs consistent with such schedules.

Each area of the country is currently subject to an equivalent PSD or NNSR permitting program for the 8-hour ozone standard and an interim PSD or NNSR permitting program for PM_{2.5}. If a particular state SIP lacks an approved PSD program, the PSD permitting requirements must be implemented in that state or local area through a federal PSD program that can be administered by the state or local permitting authority under a delegation agreement with EPA. Where a state lacks an approved NNSR program, the state may issue NNSR permits

pursuant to an EPA regulation at 40 CFR Part 51, Appendix S. If such a state lacks authority to issue permits consistent with appendix S, EPA is the permitting authority.

In April 2004 and November 2005, EPA promulgated regulations in two phases that addressed (among other topics) the implementation of the PSD and NNSR programs under the 8-hour ozone NAAQS. See 69 FR 23951 (Apr. 30, 2004); 70 Fed. Reg. 71612 (Nov. 29, 2005). The first phase of these rules requires implementation of NNSR in accordance with an area's 8-hour ozone classification after revocation of the 1-hour ozone NAAQS. See 69 FR at 23985. The EPA revoked the 1-hour ozone NAAQS on June 15, 2005. Thus, new and modified major sources of volatile organic compound and NO_x are currently subject to NNSR based on the designation and classification of the area in which they are located under the 8-hour ozone NAAQS. In an 8-hour ozone nonattainment area that currently has no approved nonattainment plan or otherwise lacks authority to implement nonattainment NSR for the 8-hour ozone NAAQS through a SIP-approved permitting program, permits for new and modified major stationary sources in such areas must be consistent with the requirements in appendix S of 40 CFR. Part 51. IEPA determined that states did not need to submit any revisions of their existing PSD programs to implement of the 8-hour ozone NAAQS, but the Agency simultaneously promulgated new rules to establish NO_x as a precursor for ozone under the PSD program. See 68 FR. 32802, 32843-44 (Jun. 2, 2003); 70 FR at 71679. The EPA established June 15, 2007 as the deadline for states to provide SIP submissions that incorporate the requirements of the phase II ozone implementation rule into their PSD and NNSR programs. See 70 FR at 71683.

For PM_{2.5}, EPA has recommended that states employ an interim PM_{2.5} program that involves implementing existing PSD and NNSR programs for PM₁₀ as a surrogate for the PM_{2.5} requirements until the necessary tools are in place for states to adopt PSD and NNSR programs for PM_{2.5}. See, Memorandum from John Seitz, EPA OAQPS, "Interim Implementation for the New Source Review Requirements for PM_{2.5}," (October 23, 1997); Memorandum from Steve Page, EPA OAQPS, "Implementation of New Source Review Requirements in PM_{2.5} Nonattainment Areas." (April 5, 2005). In November 2005, EPA has proposed regulations that establish the minimum requirements for PSD and NNSR programs for PM_{2.5}, 70 FR 65984, 66033 (Nov. 1, 2005), but the Agency has not promulgated final regulations on this subject. States are not required to submit PSD and NNSR program SIPs for PM_{2.5} until EPA completes these regulations and finalizes the submission schedule, which we have proposed to be April 5, 2008. Until the submission date is established in EPA's final PM_{2.5} implementation rule for NSR, states may continue to implement interim programs based on PM₁₀ and need not provide PSD or NNSR program submissions containing rule changes for PM_{2.5}.

The air quality demonstrations required for issuance of a PSD and NNSR permit must be made for all areas that are potentially impacted by the emissions from a proposed source or modification requiring a permit. As a result, the implementation of a PSD and NNSR permitting program in each state serves to prevent significant deterioration in neighboring states and thus largely satisfies the requirements of section 110(a)(2)(D)(i)(II) of the CAA. A PSD permit may not be issued unless the new or modified source demonstrates that emissions from the

construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds of any NAAQS or any maximum allowable increase (known as the PSD increment). 42 U.S.C. § 7475(a)(3); 40 CFR § 51.166(k). A NNSR permit may not be issued unless the new or modified source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is in nonattainment, consistent with reasonable further program toward attainment. These offsetting reductions could also help serve to prevent significant deterioration in any instance where the emissions of a nonattainment pollutant from a source in a nonattainment area would impact a nearby attainment area for that pollutant.

In addition to PSD permitting program, a SIP may include additional measures as necessary to prevent air pollution in excess of the PSD increment that defines significant deterioration for each area. 40 CFR § 51.166(a). The EPA has not established PSD increments for ozone or PM_{2.5}. Without these components of a PSD program, it is difficult for states to determine if additional measures are needed to prevent significant deterioration within the state. Likewise, a neighboring state cannot determine whether its SIP would interfere with such additional measures in another state's SIP. However, notwithstanding the absence of PSD increments for ozone and PM_{2.5}, states may continue to rely on their existing PSD and NNSR permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent states.

Because the PSD and NNSR permitting programs currently applicable in each area require a demonstration that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS in neighboring states or that sources in nonattainment areas procure offsets, EPA believes that states need not make an additional SIP submission containing rule changes or modeling demonstrations to address the "prevent significant deterioration" requirement of section 110(a)(2)(D)(i)(II) for the 8-hour ozone and PM_{2.5} NAAQS. For 8-hour ozone, each state only needs to make a SIP submission confirming that major sources in the state are currently subject to PSD and NNSR permitting programs that implement the 8-hour ozone standard and that SIP-approved states are on track to meet the June 15, 2007 deadline for SIP submissions adopting the requirements of the Phase II ozone implementation rule. For PM_{2.5}, states need only provide a SIP submission confirming that major sources in the state are subject to PSD and NNSR permitting programs implemented in accordance with EPA's interim guidance calling for use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NNSR programs. Additional SIP submissions will be due after the final NSR implementation rules for PM_{2.5} are promulgated.

The EPA will assist each State to evaluate the available information and to develop a sufficient SIP submission and demonstration to meet this element of section 110(a)(2)(D)(i). The EPA will take action on the SIP submissions made by States through notice and comment rulemaking, thereby assuring that the requirements are met.

6. SIP Submissions from States pertaining to the “protect visibility” requirement of section 110(a)(2)(D)(i):

Section 110(a)(2)(D)(i)(II) also contains a requirement for all States to submit SIPs that contain adequate provisions prohibiting “... any source or other type of emission activity within the State from emitting any air pollutant in amounts which will - interfere with measures required to be included in the applicable implementation plan for any other State....to protect visibility.”

The EPA adopted a phased approach to visibility protection, issuing regulations in 1980 to address reasonably attributable visibility impairment, i.e., visibility impairment that is caused by the emissions of air pollutants from one, or a small number of sources, and issuing regulations in 1999 to address regional haze, i.e., “visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area.”⁷ Under the 1980 regulations, 33 States and the Virgin Islands were required to submit SIPs to address reasonably attributable visibility impairment. At this point in time, EPA has made no determination that emissions from any State interfere with measures required to be included in a plan to address reasonably attributable visibility impairment. Further, EPA is not aware of any certification of existing reasonably attributable impairment of visibility by a Federal Land Manager that has not already been resolved. The EPA accordingly believes that States should be able to make a relatively simple SIP submission verifying that no source within the State emits pollutants that interfere with measures included in the visibility SIPs under the 1980 regulations.

In 1999, EPA found that all States contain sources whose emissions are reasonably anticipated to contribute to regional haze in one or more Class I areas.⁸ Pursuant to this finding, States are currently under an obligation to submit SIPs that contain measures to address regional haze, including a long-term strategy to address visibility impairment for each Class I area which may be affected by emissions from a State.⁹ The States and Regional Planning Organizations are currently engaged in the task of identifying those Class I areas impacted by each State’s emissions and developing strategies for addressing regional haze to be included in the States’ regional haze SIPs. These SIP submissions are due no later than December 17, 2007.

As a result, EPA believes that it is currently premature to determine whether or not State SIPs for 8-hour ozone or PM_{2.5} contain adequate provisions to prohibit emissions that interfere with measures in other States’ SIPs designed to address regional haze. Accordingly, EPA believes that States may make a simple SIP submission confirming that it is not possible at this time to assess whether there is any interference with measures in the applicable SIP for another

⁷ See, 40 CFR section 51.300-308.

⁸See, “Regional Haze Regulations,” 64 FR 35,714, 35,721 (July 1, 1999).

⁹40 CFR 51.308(d)(3).

State designed to “protect visibility” for the 8-hour ozone and PM_{2.5} NAAQS until regional haze SIPs are submitted and approved.

The EPA will assist each State to evaluate the available information and to develop a sufficient SIP submission and demonstration to meet this element of section 110(a)(2)(D)(i). EPA will take action on the SIP submissions made by States through notice and comment rulemaking, thereby assuring that the requirements are met.

7. When should States make section 110(a)(2)(D)(i) SIP submissions?

The EPA made the finding of failure to submit in April of 2005, with an effective date of May 25, 2005. As a result of the finding of failure to submit, the CAA imposes a 24-month clock for EPA to issue a FIP, unless a State has made the required submission to cure the failure to submit and EPA has acted to approve such submission fully in advance of the end of the 24-month period.

In conjunction with the CAIR, EPA has promulgated a FIP for all jurisdictions in the CAIR region to provide a federal backstop to insure timely and effective reductions of emissions from those States in accordance with section 110(a)(2)(D)(i)(I). The EPA has not, however, promulgated a FIP addressing section 110(a)(2)(D)(i) for any States outside of the CAIR region. States outside the CAIR region must therefore make submissions to meet the significant contribution and interference with maintenance requirements of section 110(a)(2)(D)(i)(I) to avoid a FIP addressing those requirements. In addition, all States have an outstanding statutory obligation to make a SIP submission to meet the requirements of section 110(a)(2)(D)(i)(II) in avoid a FIP for those requirements.

The EPA is currently under an obligation to issue a FIP by May 25, 2007, for any State that does not make a submission that cures the outstanding elements of section 110(a)(2)(D)(i) for that State. Unless the State makes the necessary SIP submission sufficiently in advance of that date for EPA to evaluate the submission and to take the necessary rulemaking action to approve or disapprove it, EPA may need to initiate the FIP rulemaking process in order to meet the May 2007 FIP deadline. For this reason, EPA believes that it would be appropriate for each State to make the SIP submission necessary to meet its outstanding obligations under section 110(a)(2)(D)(i) well in advance of the May 25, 2007 FIP deadline. The EPA therefore suggests that States should make their SIP submission by no later than November 25, 2006, in order to allow adequate time for the necessary Agency action on the submission.

The EPA recognizes that this target SIP submission date is only 18 months after the effective date of the finding of failure to submit, and that the Agency is issuing this guidance concerning the necessary SIP submissions only shortly in advance of the target date. As a result, EPA intends to be as flexible as possible with respect to the target SIP submission date and will work with States to insure that they can make appropriate SIP submissions as close to

November 25, 2006, as possible. However, in the event of submissions significantly later than this date, EPA may need to initiate the FIP process to meet its own statutory obligations to implement FIPs where States fail to submit SIPs that the Agency can approve in advance of the May 25, 2007 FIP deadline.

Attachment A: States subject to the CAIR

| | |
|----------------------------|----------------------|
| Alabama | Mississippi |
| Arkansas (ozone only) | Missouri |
| Connecticut (ozone only) | New York |
| Florida | New Jersey |
| Delaware | North Carolina |
| Georgia (PM 2.5 only) | Ohio |
| Illinois | Pennsylvania |
| Indiana | South Carolina |
| Iowa | Tennessee |
| Kentucky | Texas (PM 2.5 only) |
| Louisiana | Virginia |
| Maryland | West Virginia |
| Massachusetts (ozone only) | Wisconsin |
| Michigan | District of Columbia |
| Minnesota (PM 2.5 only) | |