

Technical Support Document (TSD)
for the Transport Rule Supplemental Notice of Final Rulemaking
Docket ID No. EPA-HQ-OAR-2009-0491

**Status of CAA 110(a)(2)(D)(i)(I) SIPs
Supplemental Rule TSD**

U.S. Environmental Protection Agency
Office of Air and Radiation
December 2011

Status of 110(a)(2)(D)(i)(I) SIPs

This document describes, for the states of Iowa, Kansas, Michigan, Missouri, Oklahoma and Wisconsin, the status of each Clean Air Act (CAA or Act) 110(a)(2)(D)(i)(I) state implementation plan (SIP) for the 1997 ozone NAAQS. It describes any findings of failure to submit 110(a)(2)(D)(i)(I) SIPs for the 1997 ozone NAAQS made by EPA for these states, and any actions taken by EPA with respect to 110(a)(2)(D)(i)(I) SIP submissions for the 1997 ozone NAAQS received from these states. The facts presented in this TSD support EPA's conclusion that it has a legal obligation to promulgate each of the FIPs promulgated in this rule. Note that EPA is not promulgating a FIP for Kansas. Nonetheless, for completeness, this document includes an explanation of the status of the Kansas 110(a)(2)(D)(i)(I) SIP for the 1997 ozone NAAQS.

Iowa

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS (70 FR 21147) and has not, subsequent to that date, received and approved a SIP revision to correct the deficiency. On August 15, 2006, Iowa submitted a SIP revision to, among other things, replace the CAIR FIP for the 1997 ozone NAAQS in Iowa. This SIP revision incorporated the CAIR trading program for ozone-season NO_x into the Iowa SIP and was approved by EPA on August 6, 2007 (72 FR 43539). On March 8, 2007 (72 FR 10380), EPA took action to approve Iowa's actions to address the requirements of 110(a)(2)(D)(i) which included reliance solely on CAIR trading programs to satisfy 110(a)(2)(D)(i)(I). As noted in the preamble to the Transport Rule, following the D.C. Circuit decision in North Carolina (North Carolina v. EPA), 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, North Carolina v. EPA, 550 F.3d 1176, 1178 (D.C. Cir. 2008), these actions by Iowa cannot be said to correct the 110(a)(2)(D)(i)(I) deficiency identified in the April 25, 2005 finding of failure to submit. In addition, in the final Transport Rule (76 FR 48208), EPA corrected its prior approvals of CAIR related SIP submissions and CAA 110(a)(2)(D)(i)(I) SIP submissions from Iowa to rescind any statements that the SIP submissions either satisfy or relieve the state of the obligation to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS or any statements that EPA's approval of the SIP submissions either relieve EPA of the obligation to promulgate a FIP or remove EPA's authority to promulgate a FIP. Based on these facts, the provisions of CAA section 110(c)(1) establish that the Administrator shall promulgate a FIP for the state of Iowa addressing the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.

Kansas

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS. (See 70 FR 21147.) Subsequent to that date, Kansas submitted and EPA approved a SIP revision (72 FR 10608) to correct the deficiency. This SIP revision did not rely on participation in any CAIR trading programs or compliance with any budgets established in CAIR to satisfy

the requirements of section 110(a)(2)(D)(i)(I). Neither the provisions of the Kansas SIP, nor EPA's conclusion that the SIP provisions satisfied the requirements of 110(a)(2)(D)(i)(I) were directly affected by the decision of the D.C. Circuit in North Carolina v. EPA. In 2011, EPA proposed to find that the approved Kansas SIP is substantially inadequate to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 1997 ozone NAAQS. Specifically, on January 6, 2011, EPA proposed a SIP Call for Kansas, pursuant to section 110(k)(5) of the Act (76 FR 763). EPA intends to take final action on the proposed SIP Call for Kansas concurrent with this action or shortly thereafter.

Michigan

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS (70 FR 21147) and has not, subsequent to that date, received and approved a SIP revision to correct the deficiency. On July 16, 2007, Michigan submitted an abbreviated CAIR SIP revision to, among other things, modify the CAIR FIP for the 1997 ozone NAAQS; on June 10, 2009, Michigan submitted a revised abbreviated SIP revision. EPA approved these abbreviated SIP revisions on December 20, 2007 (72 FR 72256) and August 18, 2009 (74 FR 41637). As noted in the preamble to the Transport Rule, the abbreviated SIPs approved by EPA modified but did not replace the CAIR FIPs promulgated by EPA. Following approval of the abbreviated CAIR SIP, the CAIR FIP remained the legal vehicle for implementation of the CAIR requirements in Michigan. The CAIR FIPs were all found unlawful and remanded to EPA to be replaced by rules consistent with the D.C. Circuit decision in North Carolina. EPA's approval of an abbreviated CAIR SIP thus has no impact on EPA's authority and obligation to promulgate a FIP to correct the 110(a)(2)(D)(i)(I) deficiency identified in the April 25, 2005 finding of failure to submit. Based on these facts, the provisions of CAA section 110(c)(1) establish that the Administrator shall promulgate a FIP for the state of Michigan addressing the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.

Missouri

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS (70 FR 21147) and has not, subsequent to that date, received and approved a SIP revision to correct the deficiency. On May 18, 2007, Missouri submitted a SIP revision to, among other things, replace the CAIR FIP for the 1997 ozone NAAQS in Missouri. This SIP revision incorporated the CAIR trading program for ozone-season NO_x into the Missouri SIP, and was approved by EPA on December 14, 2007 (72 FR 71073). On May 8, 2007 (72 FR 25975), EPA took action to approve Missouri's actions to address requirements of 110(a)(2)(D)(i), which included reliance solely on the CAIR trading programs to satisfy 110(a)(2)(D)(i)(I). As noted in the preamble to the Transport Rule, following the D.C. Circuit decision in North Carolina, these actions by Missouri cannot be said to correct the 110(a)(2)(D)(i)(I) deficiency identified in the April 25, 2005 finding of failure to submit. In addition, in the final Transport Rule (76 FR 48208), EPA corrected its prior approvals of CAIR related SIP submissions and CAA 110(a)(2)(D)(i)(I) SIP submissions from Missouri to rescind any statements that the SIP submissions either satisfy or relieve the state of the

obligation to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS or any statements that EPA's approval of the SIP submissions either relieve EPA of the obligation to promulgate a FIP or remove EPA's authority to promulgate a FIP. Based on these facts, the provisions of CAA section 110(c)(1) establish that the Administrator shall promulgate a FIP for the state of Missouri addressing the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.

Oklahoma

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS. (See 70 FR 21147.) Subsequent to that date, Oklahoma submitted SIP revisions to address the requirements of this section. EPA proposed action on these SIP revisions on October 17, 2011 (76 FR 64065). Specifically, with respect to the 1997 NAAQS EPA proposed to disapprove or in the alternative approve the portion of the submittal asserting that Oklahoma emissions do not interfere with maintenance of the NAAQS in another state and to approve the portions of the submittal asserting that Oklahoma emissions do not significantly contribute to nonattainment of the NAAQS in another state. This notice made it clear that EPA had not determined that the portion of the SIP submittal asserting that Oklahoma did not interfere with maintenance of the NAAQS in another state met the requirements of the Clean Air Act. To date, EPA has not taken any action to approve a SIP revision from Oklahoma addressing the requirement in 110(a)(2)(D)(i)(I) that emissions from Oklahoma that interfere with maintenance of the 1997 ozone NAAQS in another state be prohibited. Based on these facts, the provisions of CAA section 110(c)(1) establish that the Administrator shall promulgate a FIP for the state of Oklahoma addressing the interfere with maintenance requirement of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.

Wisconsin

On April 25, 2005 EPA made a finding of failure to submit a SIP to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 ozone NAAQS (70 FR 21147) and has not, subsequent to that date, received and approved a SIP revision to correct the deficiency. On June 19, 2007, Wisconsin submitted an abbreviated CAIR SIP revision to, among other things, modify the CAIR FIP for the 1997 ozone NAAQS, which EPA approved on October 16, 2007 (72 FR 58542). As noted in the preamble to the Transport Rule, the abbreviated SIPs approved by EPA modified but did not replace the CAIR FIPs promulgated by EPA. Following approval of the abbreviated CAIR SIP, the CAIR FIP remained the legal vehicle for implementation of the CAIR requirements in Wisconsin. The CAIR FIPs were all found unlawful and remanded to EPA to be replaced by rules consistent with the D.C. Circuit decision in North Carolina. EPA's approval of an abbreviated CAIR SIP thus has no impact on EPA's authority and obligation to promulgate a FIP to correct the 110(a)(2)(D)(i)(I) deficiency identified in the April 25, 2005 finding of failure to submit. Based on these facts, the provisions of CAA section 110(c)(1) establish that the Administrator shall promulgate a FIP for the state of Wisconsin addressing the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS.