



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0537; FRL-9932-55-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Interstate Pollution Transport Requirements for the 2006 24-Hour
Fine Particulate Matter Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the District of Columbia State Implementation Plan (SIP). The revision addresses the infrastructure requirements for interstate transport pollution with respect to the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0537 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: Fernandez.cristina@epa.gov.

C. Mail: EPA-R03-OAR-2015-0537, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0537. 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, 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 information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website 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, 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.

Docket: All documents in the electronic docket are listed in the 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 or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, the District of Columbia (the District), through the District Department of the Environment (DDOE), submitted a formal revision to its SIP. The SIP revision addresses the infrastructure requirements for interstate transport of pollution under section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 24-hour PM_{2.5} NAAQS.

A. General

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring,

modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements.

On September 21, 2006, EPA promulgated a new 24-hour PM_{2.5} standard of 35 micrograms per cubic meter (µg/m³), based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). The 2006 24-hour PM_{2.5} NAAQS became effective on December 18, 2006. *See* 40 CFR 50.13.

This rulemaking action pertains to the District's July 16, 2015 infrastructure SIP revision addressing the interstate transport pollution requirements under section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 24-hour PM_{2.5} NAAQS. EPA has taken previous rulemaking actions on the District's SIP revision addressing infrastructure elements in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) with respect to the 2006 24-hour PM_{2.5} NAAQS. *See* 76 FR 20237 (April 12, 2011) (final approval of the District's September 21, 2009 SIP revision addressing several section 110(a)(2) requirements for the 2006 24-hour PM_{2.5} NAAQS) and 77 FR 5191 (February 2, 2012) (final approval of the District's SIP revision addressing section 110(a)(2)(i)(II) for visibility protection).

B. EPA's Infrastructure Requirements

Pursuant to section 110(a)(1), states must make infrastructure SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)." Infrastructure SIP submissions should provide for the "implementation, maintenance, and enforcement" of such NAAQS. The

statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure Guidance).¹ EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions. The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2).² EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA

¹ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013. This guidance is available online at http://www.epa.gov/oar/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.

² On September 25, 2009, EPA issued "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," Memorandum from William T. Harnett, Director, Air Quality Policy Division. This guidance provided that each state's SIP submission for the 2006 24-hour PM_{2.5} NAAQS must discuss whether emissions from the state significantly contribute to nonattainment of the NAAQS or interference with maintenance of the NAAQS in any other state and must address any such impact. This guidance is available online at http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.

reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

Additionally, EPA has provided in previous rulemaking actions a detailed discussion of the Agency's approach in reviewing infrastructure SIPs, including the Agency's longstanding interpretation of requirements for section 110(a)(1) and (2), the interpretation that the CAA allows states to make multiple SIP submissions separately addressing infrastructure SIP elements in section 110(a)(2) for a specific NAAQS, and the interpretation that EPA has the ability to act on separate elements of 110(a)(2) for a NAAQS in separate rulemaking actions. For example, see EPA's proposed rulemaking action approving portions of the District's infrastructure SIP submissions for the 2008 ozone NAAQS and the 2010 nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) NAAQS. *See* 80 FR 2865 (January 21, 2015).

In particular, section 110(a)(2)(D)(i)(I) requires state SIPs to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly, the interstate pollution transport requirements. EPA also commonly refers to these provisions conjointly as the "good neighbor" provision of the CAA. Specifically, section 110(a)(2)(D)(i)(I) of the CAA requires the elimination of upwind state emissions that significantly contribute to nonattainment or interference with maintenance of the NAAQS in another state.

A combination of local emissions and emissions from upwind sources impacts air quality in any given location. Emissions of SO₂ and nitrogen oxides (NO_x) can react in the atmosphere to form PM_{2.5} pollution. Similarly, NO_x emissions can react in the atmosphere to create ground-level ozone pollution. These pollutants can travel great distances affecting air quality and public health locally and regionally. The transport of these pollutants across state borders makes it difficult for downwind states to meet health-based air quality standards for PM_{2.5} and ozone. EPA has taken actions to facilitate implementing the “good neighbor” provision, including the promulgation and administration of various rules, such as the NO_x Budget Trading Program, the Clean Air Interstate Rule (CAIR), and most recently, the Cross-State Air Pollution Rule (CSAPR).

C. Background on CSAPR Rule

On August 8, 2011, EPA promulgated CSAPR to address SO₂ and NO_x emissions from electric generating units (EGUs) in several states in the Eastern United States that significantly contribute to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of the 1997 annual PM_{2.5} and ozone NAAQS and 2006 24-hour PM_{2.5}

NAAQS. *See* 76 FR 48208 (August 8, 2011).³

In CSAPR, EPA defined what portion of an upwind state's emissions "significantly contributed" to ozone or PM_{2.5} nonattainment or interference with maintenance areas in downwind states with respect to the 1997 annual PM_{2.5} and ozone NAAQS and 2006 24-hour PM_{2.5} NAAQS. CSAPR requires states to eliminate their "significant contribution" emissions by setting a pollution limit (or budget). EPA used a state-specific methodology to identify necessary emission reductions required by CAA section 110(a)(2)(D)(i)(I) and used a detailed air quality analysis to determine whether a state's contribution to downwind air quality problems was at or above specific thresholds. EPA defined "significant contribution" using a multi-factor analysis that took into account both air quality and cost considerations.

In promulgating CSAPR, EPA concluded that the District's SIP satisfied the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS and concluded no emission sources in the District were subject to CSAPR. As discussed in the

³ The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially issued a decision in 2012 vacating CSAPR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012); however, on April 29, 2014, the United States Supreme Court reversed the D.C. Circuit's decision and remanded the matter, including CSAPR, to the D.C. Circuit for further proceedings in accordance with its ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On October 23, 2014, the D.C. Circuit lifted the stay on CSAPR, and EPA began implementation of CSAPR on January 1, 2015. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. *See also* 79 FR 71663 (December 3, 2014) (interim final rulemaking clarifying how EPA will implement CSAPR to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 annual PM_{2.5} and ozone NAAQS and 2006 24-hour PM_{2.5} NAAQS). On July 28, 2015, in a subsequent decision on certain "as applied" challenges to CSAPR, the D.C. Circuit remanded to EPA for reconsideration specific emission allowances for ozone season NO_x and SO₂ for specific states, not including the District. *EME Homer City Generation, L.P. v. EPA*, 2015 U.S. App. LEXIS 13039 (D.C. Cir. July 28, 2015). Because the District has no emission sources subject to CSAPR and is not one of the states whose ozone season NO_x or SO₂ allowances were remanded by the D.C. Circuit's July 28, 2015 decision, EPA asserts this recent July 28, 2015 decision in *EME Homer City* by the D.C. Circuit has no impact on our conclusion in this rulemaking that the District has satisfied its obligation for section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS as explained in detail in the CSAPR rulemaking. *See* 76 FR 48208 (August 8, 2011).

preamble of the CSAPR rulemaking, EPA had combined emission contributions projected in the air quality modeling from the State of Maryland and the District to determine whether those jurisdictions collectively contribute to any downwind nonattainment or maintenance receptor in amounts equal to or greater than the one percent thresholds which EPA used to identify “significant contribution” for CAA section 110(a)(2)(D)(i) for the ozone and PM_{2.5} NAAQS. EPA’s modeling confirmed that the combined contributions exceeded the air quality threshold at downwind receptors for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS. However, the District was not included in CSAPR because in the second step of EPA’s significant contribution analysis, EPA concluded that there are no emission reductions available from EGUs in the District of Columbia at the cost thresholds deemed sufficient to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS considered at the linked receptors. *See* 76 FR 48208.

In 2011, EPA found only one facility, Benning Road Generating Station, with units meeting CSAPR applicability requirements in the District, and EPA’s projections did not show any generation from this facility to be economic under any scenario analyzed and the facility had also announced plans to retire its units in early 2012. Subsequently, Benning Road permanently retired as an air pollution source in 2012. Because EPA projected Benning Road to have zero emissions in 2012, EPA also projected zero emissions of SO₂ and NO_x in the District for EGUs that would meet the CSAPR applicability requirements. Therefore, EPA did not identify any emission reductions available at any of the cost thresholds considered in CSAPR’s multi-factor analysis to identify significant contribution to nonattainment and interference with maintenance. For that reason, EPA concluded that no additional limits or reductions were

necessary, at that time, in the District to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. *Id.*⁴

II. Summary of SIP Revision and EPA's Evaluation

The July 16, 2015 SIP revision consists of a letter from the DDOE affirming that the District has already satisfied the transport requirements under section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS. As explained in this letter, the District's determination is based on two aspects: (1) EPA's conclusion in the preamble for CSAPR that the District had no emission reductions at cost thresholds determined by EPA as necessary to address the District's transport requirements for the 1997 and 2006 PM_{2.5} and 1997 ozone NAAQS; and (2) the District's declaration provided in the SIP submittal that it currently has no EGUs within the District and the District's prior EGU, the Benning Road Generating Station, permanently shut down in 2012.

As discussed in the preamble of the final CSAPR rulemaking and explained in the District's July 16, 2015 SIP submittal, EPA had concluded that there are no emission reductions available from EGUs in the District at the cost thresholds deemed sufficient to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS considered at the linked receptors. Therefore, EPA had concluded that the District satisfied the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} NAAQS. *See* 78 FR at 48262.

⁴ EPA's determination that the District's SIP satisfied requirements of section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS and 1997 and 2006 PM_{2.5} NAAQS and its determination that no emission sources in the District were subject to CSAPR are not affected by the recent decision of the D.C. Circuit to remand specific portions of CSAPR to EPA for further consideration. *EME Homer City Generation, L.P. v. EPA*, 2015 U.S. App. LEXIS 13039 (D.C. Cir. July 28, 2015) (remanding portions of CSAPR to EPA to reconsider specific state emission allowances for ozone season NO_x and SO₂ for specific states, not including the District).

The District's July 16, 2015 SIP submission also certifies that the District currently has no EGUs that could significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS. The District confirms that Benning Road Generating Station, an EGU which was operational at the time of the promulgation of CSAPR in 2011, permanently retired as expected in 2012. The District's negative declaration further supports EPA's determination in the CSAPR preamble that the District's SIP needs no further measures or revisions to satisfy section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

III. Final Action

EPA is approving the District's SIP revision submitted on July 16, 2015 addressing the requirements for the District under section 110(a)(2)(D)(i)(I) regarding interstate transport pollution for the 2006 24-hour PM_{2.5} NAAQS. EPA concurs with the District's determination that it has no EGUs and no emissions reductions are needed for the SIP to address significant contribution to nonattainment or interference with maintenance for section 110(a)(2)(D)(i)(I) of the CAA for the 2006 24-hour PM_{2.5} NAAQS. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register**

informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to 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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This rulemaking action, addressing the interstate pollution transport requirements for the District of Columbia with respect to the 2006 24-hour PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 7, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

2. In § 52.470, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2006 PM_{2.5} NAAQS” to the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	*	
Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	District of Columbia	07/16/15	[<u>Insert date of Federal Register publication</u>] [<u>Insert Federal Register citation</u>]	This action addresses the following CAA elements, or portions thereof: 110(a)(2) (D)(i)(I).

[FR Doc. 2015-20527 Filed: 8/20/2015 08:45 am; Publication Date: 8/21/2015]