



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[DC104-2052; FRL-9955-98-Region 3]**

**Air Plan Approval; District of Columbia; Update to Materials Incorporated by Reference**

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the District of Columbia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the District of Columbia Department of Energy and Environment (DoEE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective **[insert date of publication in the Federal Register]**.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). To view the material at the EPA, Region III Office, EPA requests that you email the contact listed in

the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376 or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The SIP is a living document which the state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919), March 19, 2009 (74 FR 11647), and February 22, 2011 (76 FR 9652), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following District of Columbia regulations:

#### **A. Added Regulations and Statutes**

1. Chapter 2 (General and Non-attainment Area Permits), sections 208 and 210

2. Chapter 7 (Volatile Organic Compounds), sections 714, 755 through 758 inclusive, and 763 through 778 inclusive.

3. D.C. Official Code, Title I, Chapter 11A, (Government Ethics and Accountability), sections 1-1161.01(Definitions), 1-1161.23 (Conflicts of Interest), 1-1161.24 (Public Reporting), and 1-1161.25 (Confidential Disclosure of Financial Interest).

### **B. Revised Regulations**

1. Chapter 1 (General), sections 100 and 199.

2. Chapter 2 (General and Non-attainment Area Permits), sections 200, 204, and 299.

3. Chapter 7, (Volatile Organic Compounds), sections 700, 710, 715 through 737 inclusive, 743 through 749, 751 through 754 inclusive, and 799.

4. Chapter 10, title change to Air Quality—Non EGU Limits on Nitrogen Oxides Emissions, as well as title changes and revisions to sections 1001 through 1004.

### **C. Removed Regulations**

1. Chapter 2 (General and Non-attainment Area Permits), section 206

2. Chapter 7, (Volatile Organic Compounds), sections 707, 708, 738 through 742 inclusive, and 750.

3. Chapter 10 (Air Quality –Non EGU Limits on Nitrogen Oxides Emissions), sections 1005 through 1014 inclusive, and 1099.

## **II. EPA Action**

In this action, EPA is doing the following:

### **A. In 40 CFR 52.470(b):**

Announcing the update to the IBR material as of July 1, 2016 and revising the text within 40

CFR 52.470(b).

**B. In 40 CFR 52.470(c):**

1. Correcting a typographical error in the title for chapter 7, section 702.
2. Removing the five existing entries for chapter 7, section 799 with an EPA approval date prior to April 29, 2013.

**C. In 40 CFR 52.470(e):**

Revising the Applicable Geographic Area from “Statewide” to “District of Columbia” for the following titled areas currently found within 52.470(e): Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; the Clean Air Act (CAA) section 128 requirements in relation to State Boards; section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS); Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO<sub>2</sub>) NAAQS; Emergency Air Pollution Plan; and the Interstate Pollution Transport Requirements for the 2010 NO<sub>2</sub> NAAQS.

**III. Good Cause Exemption**

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to

the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the Code of Federal Register benefits the public by removing outdated citations and incorrect table entries.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the District of Columbia and federally effective prior to July 1, 2016. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region III Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

#### **V. 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

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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) and 13563 (76 FR 3821, January 21, 2011);
- 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 rule 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**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **C. Petitions for Judicial Review**

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded

interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for the District of Columbia.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 7, 2017

Cecil Rodrigues,  
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. Section 52.470 is amended by:

- a. Revising paragraph (b);
- b. Revising paragraph (c) table entry for Section 702;
- c. Removing the second through sixth entries for Section 799 from paragraph (c) table; and
- d. In paragraph (e), by revising the following entries: Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; CAA section 128 requirements in relation to State Boards; Section 110(a)(2) Infrastructure Requirements for the 2010 NO<sub>2</sub> NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS; Emergency Air Pollution Plan; and Interstate Pollution Transport Requirements for the 2010 NO<sub>2</sub> NAAQS.

The amendments read as follows:

**§ 52.470 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with

an EPA approval date prior to July 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after July 1, 2016 for the District of Columbia, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1). No additional revisions were made to paragraph (d) between December 1, 2010 and July 1, 2016.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to July 1, 2016 for the District of Columbia at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to:  
<http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) \*\*\*

**EPA-Approved Regulations and Statutes in the District of Columbia SIP**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
<b>District of Columbia Municipal Regulations (DCMR), Title 20- Environment</b>				
*****				
<b>Chapter 7</b>	<b>Volatile Organic Compounds</b>			
*****				
Section 702	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment	3/15/85	10/27/99 64 FR 57777	
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\* \* \* \* \*

(e) \*\*\*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
*****				
Regional Haze Plan	District of Columbia	10/27/11	2/2/12 77 FR 5191	
*****				
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS	District of Columbia	7/18/13	10/22/13 78 FR 62455	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
CAA section 128 requirements in	District of Columbia	7/18/13	10/22/13 78 FR	

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
relation to State Boards			62455	
*****				
Section 110(a)(2) Infrastructure Requirements for the 2010 NO <sub>2</sub> NAAQS	District of Columbia	6/9/14	4/13/15, 80 FR 19538	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS	District of Columbia	6/13/14	4/13/15, 80 FR 19538	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	District of Columbia	6/13/14	4/13/15, 80 FR 19538	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Emergency Air	District of	6/13/14	4/13/15, 80	This action

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
Pollution Plan	Columbia		FR 19538	addresses the requirements of 40 CFR 51, subpart H for particulate matter, sulfur oxides (SOX), carbon monoxide (CO), and ozone, as well as section 110(a)(2)(G) of the CAA for the 2008 ozone, 2010 SO <sub>2</sub> , and 2010 NO <sub>2</sub> NAAQS.
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Interstate Pollution Transport Requirements for the 2010 NO <sub>2</sub> NAAQS	District of Columbia	6/6/14	2/19/16, 81 FR 8406	This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I), or the good neighbor provision, for the 2010 NO <sub>2</sub> NAAQS.
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