



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2016-0199; FRL-9961-31-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
District of Columbia; Revision of Regulations for Sulfur Content of Fuel Oil**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the District of Columbia (the District) state implementation plan (SIP). The revision pertains to the update of the District of Columbia Municipal Regulations (DCMR) to lower the sulfur content of fuel oil. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0199. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability

information.

**FOR FURTHER INFORMATION, CONTACT:** Sara Calcinore, (215) 814-2043, or by e-mail at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 11, 2016 (81 FR 70064 and 81 FR 70020), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the District. EPA received a comment on the rulemaking and attempted to withdraw the DFR prior to the effective date of December 12, 2016. However, EPA inadvertently did not withdraw the DFR prior to that date and the rule prematurely became effective on December 12, 2016, revising the District's SIP to include DCMR Chapters 1, 5, and 8 of Title 20 on that date. In the NPR, EPA had proposed to approve the SIP revision, which would add the revised versions of DCMR Chapters 1, 5, and 8 of Title 20 to the District's SIP. These revisions to the DCMR reduce the allowable sulfur content of fuel oils that are combusted in oil-burning combustion units in the District. On January 20, 2016, the District, through the District of Columbia Department of Energy and Environment, submitted the aforementioned regulations for inclusion into the District's SIP. The revisions to the DCMR reduce the sulfur content of fuel oil that can be combusted within the District and prohibit the combustion of certain higher sulfur content fuel oil regardless of where the fuel is refined. EPA is responding to the comment submitted on the proposed revision to the District's SIP, is approving the low sulfur fuel oil regulations for inclusion in the District's SIP, and is amending the effective date of the regulations' inclusion in the SIP to correct our failure to withdraw the DFR (after EPA received adverse public comments) prior to the December 12,

2016 effective date of the DFR.

## **II. Summary of SIP Revision and EPA's Analysis**

The combustion of fuel oil containing sulfur leads to direct emissions of fine particulate matter (PM<sub>2.5</sub>) and also sulfur dioxide (SO<sub>2</sub>) – a pollutant which is a precursor to secondary formation of PM<sub>2.5</sub> pollution. In addition, SO<sub>2</sub> emissions oxidize in the atmosphere to form sulfates, which are one of the largest contributors to the formation of regional haze, which impairs visibility in the atmosphere by the scattering and absorption of sunlight by fine particles. Visibility impairment reduces the clarity, color, and visible distance that one can see. The District asserts its regulations limiting sulfur content in fuel oil used by certain fuel combustion sources and the prohibition of combustion of high sulfur content fuel oil within the District will decrease SO<sub>2</sub> emissions and therefore strengthen the District's SIP. The reduction in SO<sub>2</sub> emissions helps the District to maintain the national ambient air quality standards (NAAQS) for SO<sub>2</sub> and PM<sub>2.5</sub>. Additional SO<sub>2</sub> emission reductions and subsequent reductions in sulfates from District sources combusting lower sulfur fuel will assist the District in achieving further reasonable progress towards reducing regional haze. Under section 169A of the CAA, it is a national goal to remedy and prevent regional haze in any Class I areas.<sup>1</sup> Section 169A requires states which contain Class I areas and states from which emissions may reasonably be anticipated to cause or contribute to visibility impairment in Class I areas to submit SIP revisions to make reasonable progress toward meeting the national goal (regional haze SIPs). The District's regional haze program to address visibility impairment requirements in Class I areas was fully approved into

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<sup>1</sup> Class I areas include national parks, wilderness areas, or other areas of national importance that have visibility protection requirements.

the District's SIP by EPA on February 2, 2012. *See* 77 FR 5191.<sup>2</sup> The

District has submitted revised regulations for SIP approval to implement its low sulfur fuel oil program.

These revisions to DCMR Chapters 1, 5, and 8 of Title 20 require that the sulfur content of Number 2 (No. 2) fuel oil be no greater than 500 parts per million (ppm); the sulfur content of Number 4 (No. 4) fuel oil be no greater than 2,500 ppm; and prohibit the use of Number 5 (No. 5) and heavier fuel oils in the District. Additionally, beginning July 1, 2018, the sulfur content of No. 2 fuel oil can be no greater than 15 ppm. Any fuel oil stored by the ultimate consumer in the District prior to the applicable compliance date may be used after the applicable compliance date. The revisions also include changes to reporting and recordkeeping requirements related to the use and storage of the aforementioned fuel oils. Definitions for terminology which relate to reporting and recordkeeping requirements were added.

The updates to Chapter 1 include amendments to the definitions of "American Standards of Testing Materials (ASTM)" and "distillate oil." The revision to Chapter 5 includes updates to the sampling and testing practices for fuel oils. The amended Chapter 5 regulations require the use of various ASTM methods for the sampling of petroleum; an ASTM standard for the determination of fuel oil grade; and various ASTM methods for the determination of sulfur content in fuel oil. Chapter 8 includes the revised sulfur content for No. 2 and No. 4 fuel oils and

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<sup>2</sup> The District's regional haze SIP addressing the planning period from 2008 to 2018 is consistent with EPA's requirements in 40 CFR 51.308 and 51.309. The SIP addressed contribution to visibility impairment related to emissions of PM<sub>2.5</sub> and its precursors, and included measures to address emissions that would interfere with reasonable progress goals of neighboring states set to protect Class I areas. During the development of the first round of regional haze SIPs, the regional planning organization for the Northeastern and Mid-Atlantic states, Mid-Atlantic/Northeast Visibility Union (MANE-VU), established a strategy for these states to meet the requirements of reasonable progress goals by implementing certain measures, including pursuing a low sulfur fuel oil strategy to reduce sulfur content in fuels by 2018.

prohibits combustion of No. 5 and heavier fuel oils in the District. Chapter 8 also includes the aforementioned compliance provision and definitions related to reporting and recordkeeping requirements.<sup>3</sup>

As discussed in the DFR and NPR, EPA finds the District's low sulfur fuel regulations will improve visibility while also helping the District to maintain the NAAQS for SO<sub>2</sub> and PM<sub>2.5</sub> by reducing sulfur oxide emissions and PM<sub>2.5</sub> emissions through reduction of sulfur in fuel oils combusted in the District. EPA finds that these regulations strengthen the District's SIP. EPA notes that existing provisions and the adoption of a low sulfur fuel oil program in the District will lead to SO<sub>2</sub> emission reductions and provide additional SO<sub>2</sub> and PM<sub>2.5</sub> emission reductions from the District to achieve further reasonable progress towards reducing regional haze in nearby Class I areas, which may be impacted by emissions from the District.

### **III. Public Comments and EPA's Responses**

EPA received comments from the Export Inspection Council of India within the Ministry of Commerce and Industry, Government of India (hereinafter referred to as "commenter") on November 10, 2016.

**Comment Summary:** The commenter noted that the District is of the view that the lower sulfur fuel oil regulation will decrease SO<sub>2</sub> emissions from certain fuel combustion sources which results in the strengthening of the District's SIP and which will help the District maintain the SO<sub>2</sub> NAAQS. The commenter asked whether this SIP revision is based on any scientific studies or

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<sup>3</sup> Chapter 8 also includes provisions allowing waiver of fuel oil limits when EPA has granted fuel waivers. Chapter 8 also addresses fuel oil sulfur limits when a person, owner, or operator of a stationary source employs equipment or a process to reduce sulfur emissions from burning fuel oil.

justifications on the low sulfur content of fuel oil. The commenter also asked whether the rule implementing the lower sulfur content of fuel oil has any significance to meeting any “multilateral obligation.” Finally, the commenter inquired whether the proposed SIP revision applies to only domestically produced fuel oil or also applies to fuel oil exported to the United States.

**Response:** In response to the commenter’s inquiry whether this regulation applies to fuel oil imported into the District, as well as to fuel oil produced within the District, EPA notes that the District’s regulation applies to all fuel oil to be combusted within the District and limits the sulfur content of fuel oil combusted within the District regardless of where the fuel oil is refined. Thus, EPA responds to the commenter that the District’s regulation limits the sulfur content of all fuel oil combusted within the District, whether the fuel oil is domestically produced or imported from sources outside the District or outside the United States. *See* title 20 of DCMR chapter 8 section 801.

As the commenter notes, the District’s regulation lowering the sulfur content of fuel oil combusted within the District will reduce SO<sub>2</sub> emissions within the District and aid the District in attaining and maintaining the SO<sub>2</sub> NAAQS as EPA noted in the NPR. The District’s regulation to reduce the sulfur content in fuel oil is also a response by the District to address regional needs to reduce SO<sub>2</sub>, the primary pollutant in the Mid-Atlantic and Northeast United States responsible for visibility impairment or regional haze. To address CAA requirements for regional haze, the Mid-Atlantic and Northeastern states agreed to pursue common efforts to reduce SO<sub>2</sub> and visibility impairment. One effort to which these states agreed was the reduction of sulfur content in fuel oil. A contribution assessment for these states was prepared for the first round of regional

haze SIPs due in 2007 entitled *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*.<sup>4</sup> The assessment provided an analysis of pollutant contributions to the formation of regional haze as well as pollutant apportionment among states in the Mid-Atlantic and Northeast regions of the United States. The assessment found that SO<sub>2</sub> accounts for 20 percent of the haziest days in the Mid-Atlantic and Northeast region. These states developed a coordinated course of action to address the SO<sub>2</sub> emissions contributing to regional haze in the eastern United States and asked states in this area to adopt regulations to lower the sulfur content of fuel oil. To meet this coordinated course of action and to also reduce SO<sub>2</sub> emissions in general to aid in attaining and maintaining the SO<sub>2</sub> NAAQS, the District adopted the low sulfur fuel oil regulations, which are the subject of this SIP revision. Other than this “contribution assessment,” which aided states in the Mid-Atlantic and Northeast regions to address regional haze, EPA is not aware of any other scientific studies or justifications on low sulfur content of fuel oil on which the District’s regulation for sulfur content in fuel oil is based.

Finally, regarding whether the District’s regulation has any significance to meeting any multilateral obligation, EPA is unaware to what the commenter refers by “multilateral obligation” as the commenter has not defined this phrase. Assuming *arguendo* that the commenter meant to ask whether this low sulfur fuel regulation from the District addresses any obligations of the District or of the United States to “international communities” via treaties or other international law obligations, EPA is not aware of any “multilateral obligations” to which this regulation is intended to apply. The District’s January 20, 2016 submission only states that its submitted regulation which lowers the sulfur content of fuel combusted within the District

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<sup>4</sup> This document can be found at: <http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic--united-states/>

was intended to reduce SO<sub>2</sub> emissions within the District and aid the District in attaining and maintaining the SO<sub>2</sub> NAAQS. The District's January 20, 2016 SIP revision submittal did not address whether the District's regulation addressed any multilateral obligation nor is EPA aware of any multilateral obligation which this regulation is intended to address.

#### **IV. Final Action**

EPA is approving revisions to the DCMR Chapters 1, 5, and 8 of Title 20 for inclusion in the District's SIP because the revisions meet the requirements of the CAA in section 110 and strengthen the District's SIP. The revisions to the DCMR Chapters include limits on sulfur content in fuels to be combusted within the District and a prohibition on combustion of high sulfur content fuels which will reduce SO<sub>2</sub> emissions in the District. EPA is also amending the effective date of the inclusion of these revisions to the District's SIP because the revisions were added to the SIP prematurely on December 12, 2016 when EPA failed to withdraw its DFR after receiving a comment on our approval of the District's low sulfur fuel regulations. This rule which responds to the comment received finalizes our approval and corrects the premature effective date for inclusion of the revised low sulfur fuel regulations in the District's SIP.

#### **V. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the DCMR Chapters 1, 5, and 8 of Title 20. 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 of the SIP compilation.<sup>5</sup> EPA has made, and will continue to make, these materials generally available through <https://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).

## **VI. 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 Orders 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.);

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<sup>5</sup> 62 FR 27968 (May 22, 1997).

- 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 after date of publication 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.

This action approving the revisions to the District of Columbia's regulations to lower the sulfur content of fuel oil 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, Reporting and recordkeeping requirements,  
Sulfur oxides.

Dated March 21, 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. In § 52.470, the table in paragraph (c) is amended by revising the entries for “Section 199”, “Sections 502.1 through 502.15”, “Section 801”, and “Section 899”to read as follows:

**§ 52.470 Identification of plan.**

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(c) \* \* \*

<b>EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP</b>				
<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 1 General</b>				
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Section 199	Definitions and Abbreviations	08/16/15	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Added two new definitions.
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<b>Chapter 5 Source Monitoring and Testing</b>				
* * * * *				
Sections 502.1	Sampling, Tests, and Measurements	08/16/15	[Insert date of	Updates to sampling and testing practices for fuel

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
through 502.15			<u>publication in the Federal Register</u> [Insert Federal Register citation]	oils. Exceptions: Paragraphs 502.11, 502.12 and 502.14 are not part of the SIP.
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<b>Chapter 8 Asbestos, Sulfur and Nitrogen Oxides</b>				
Section 801	Sulfur Content of Fuel Oils	08/16/15	[Insert date of <u>publication in the Federal Register</u> ] [Insert Federal Register citation]	Updates to the sulfur content of No. 2 and No.4 fuel oils and the prohibition of the use of No. 5 fuel oil.
* * * * *				
Section 899	Definitions and Abbreviations	08/16/15	[Insert date of <u>publication in the Federal Register</u> ] [Insert Federal Register citation]	Addition of new definitions that relate to the handling and storage of fuel oil.
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[FR Doc. 2017-08642 Filed: 4/28/2017 8:45 am; Publication Date: 5/1/2017]