



This document is scheduled to be published in the Federal Register on 10/18/2017 and available online at <https://federalregister.gov/d/2017-22253>, and on [FDsys.gov](https://www.fdsys.gov)

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0701; FRL-9969-51-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a state implementation plan (SIP) revision submitted by the District of Columbia (the District). This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2010 1-hour sulfur dioxide (SO_2) 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 No. EPA-R03-OAR-2014-0701 at <https://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of

submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: On July 17, 2014, the District of Columbia (the District) through the District Department of Energy and the Environment (DDOEE) submitted a SIP revision addressing the infrastructure requirements under section 110(a)(2) of the CAA for the 2010 1-hour SO₂ NAAQS.

I. Background

On June 2, 2010, the EPA strengthened the SO₂ primary standards, establishing a new 1-hour primary standard at the level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (hereafter “the 2010 1-hour SO₂ NAAQS”). At the same time, the EPA also revoked the previous 24-hour and annual primary SO₂ standards. *See* 75 FR 35520 (June 22, 2010). *See* 40 CFR 50.11. The previous SO₂ air

quality standards were set in 1971, including a 24-hour average primary standard at 140 ppb and an annual average primary standard at 30 ppb. *See* 36 FR 8186 (April 30, 1971).

SO₂ is one of a group of highly reactive gases known as “oxides of sulfur.” Nationally, the largest sources of SO₂ emissions are fossil fuel combustion at power plants and other industrial facilities. Smaller sources of SO₂ emissions include industrial processes such as extracting metal from ore, and the burning of high sulfur containing fuels by locomotives, large ships, and non-road equipment. SO₂ is linked with a number of adverse effects on the respiratory system.

The CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIPs meeting the applicable elements of sections 110(a)(1) and (2).¹ Several of these applicable elements are delineated within section 110(a)(2)(D)(i) of the CAA. Section 110(a)(2)(D)(i) generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four prongs within section 110(a)(2)(D)(i) of the CAA; section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. According to the CAA’s good neighbor provision located within section 110(a)(2)(D)(i)(I), a state’s SIP must contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that “contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard.” Under section 110(a)(2)(D)(i)(I) of the CAA, EPA gives independent significance to the matter of nonattainment (prong 1) and to that of maintenance (prong 2).

¹ SIP revisions that are intended to meet the requirements of section 110(a) of the CAA are often referred to as infrastructure SIPs and the elements under 110(a) are referred to as infrastructure requirements.

II. Summary of SIP Revisions and EPA Analysis

On July 17, 2014, the District, through DDOEE, submitted a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 1-hour SO₂ NAAQS, including section 110(a)(2)(D)(i)(I). On April 13, 2015 (80 FR 19538), the EPA approved the District's infrastructure SIP submittal for the 2010 1-hour SO₂ NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I).² This rulemaking action is addressing the portions of the District's infrastructure submittal for the 2010 1-hour SO₂ NAAQS that pertain to transport requirements.³

The portion of the District's July 17, 2014 SIP submittal addressing interstate transport (for section 110(a)(2)(D)(i)(I)) includes an emissions inventory and air quality data that concludes that the District does not have sources that can contribute with respect to the 2010 1-hour SO₂ NAAQS to nonattainment in, or interfere with maintenance in, any other state. The submittal also included currently available air quality monitoring data which alleged that SO₂ levels continue to be well below the 2010 1-hour SO₂ NAAQS in the District and in any areas surrounding or bordering the District. EPA has reviewed current monitoring data for SO₂ and finds monitor data within the District, and in areas surrounding the District, continue to show no nonattainment issues with regards to the SO₂ NAAQS.

Additionally, the District described in its submittal several existing SIP-approved measures and other federally enforceable source-specific measures, including measures pursuant to permitting

² In the April 13, 2015 action, the EPA also approved the District's infrastructure SIPs for the 2008 ozone and 2010 NO₂ NAAQS, with the exception of the transport elements in 110(a)(2)(D)(i)(I).

³ For the EPA's explanation of its ability to act on discrete elements of section 110(a)(2), see 80 FR 2865 (Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards; Approval of Air Pollution Emergency Episode Plan (January 21, 2015)).

requirements under the CAA, that apply to SO₂ sources within the District. The District alleges with these measures, SO₂ emissions within the District are minimal. The EPA finds that the District's existing SIP provisions, as identified in the July 17, 2014 SIP submittal, are adequate to prevent the District's emission sources from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2010 1-hour SO₂ NAAQS. In light of these measures, the EPA does not expect SO₂ emissions in the District to increase significantly, and therefore does not expect monitors in the District and nearby states to have difficulty continuing to attain or maintain attainment of the NAAQS. A detailed summary of EPA's review and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2014-0701.

III. Final Action

EPA is approving the portions of the District's July 17, 2014 SIP revision addressing interstate transport for the 2010 1-hour SO₂ NAAQS as these portions meet the requirements in section 110(a)(2)(D)(i)(I) of the CAA. 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 this **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 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.);
- 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. 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 this **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 action, addressing the District's interstate transport for the 2010 1-hour SO₂ 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, Sulfur oxides.

Dated: September 29, 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 (e) is amended by adding a second entry for “Section 110(a)(2) Infrastructure Requirements for the 2010 SO₂ NAAQS” before the entry for “Emergency Air Pollution Plan” to read as follows:

§ 52.470 Identification of plan.

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(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 2010 SO ₂ NAAQS District-wide	District-wide	07/18/14	<u>[Insert date of Federal Register publication],</u> <u>[Insert Federal Register citation]</u>	This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I), or the good neighbor provision, for the 2010 SO ₂ NAAQS.
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[FR Doc. 2017-22253 Filed: 10/17/2017 8:45 am; Publication Date: 10/18/2017]