6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0701; FRL-9976-30-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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 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-2014-0701. 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: 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 SO_2 NAAQS.

I. Background

A. General

On June 2, 2010, the EPA strengthened the SO_2 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 99^{th} percentile of 1-hour daily maximum concentrations (hereafter "the 2010 1-hour SO_2 NAAQS"). At the same time, the EPA also revoked the previous 24-hour and annual primary SO_2 standards. *See* 75 FR 35520 (June 22, 2010). *See* 40 CFR 50.11. The previous SO_2 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).

SO_2 is one of a group of highly reactive gases known as "oxides of sulfur." Nationally, the largest sources of SO_2 emissions are fossil fuel combustion at power plants and other industrial facilities. Smaller sources of SO_2 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. SO_2 is linked with a number of adverse effects on the respiratory system.

B. EPA's Infrastructure Requirements

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS – such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

C. Interstate Pollution Transport Requirements

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1

(significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the "good neighbor" provision of the CAA. Further information can 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.

II. Summary of SIP Revision 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 SO_2 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 SO_2 NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I).[1] This rulemaking action is addressing the portions of the District's infrastructure submittal for the 2010 1-hour SO_2 NAAQS that pertain to transport requirements.[2] On October 18, 2017 (82 FR 48472 and 82 FR 48439), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the District approving the SIP revision. EPA received four comments on the rulemaking and withdrew the DFR prior to the effective date of December 18, 2017.

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 SO_2 NAAQS to nonattainment in, or interfere with maintenance in, any other state. The submittal

[1] In the April 13, 2015 action, the EPA also approved the District's infrastructure SIPs for the 2008 ozone and 2010 NO_2 NAAQS, with the exception of the transport elements in 110(a)(2)(D)(i)(I).

[2] 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)).

also included currently available air quality monitoring data which alleged that SO_2 levels continue to be well below the 2010 1-hour SO_2 NAAQS in the District and in any areas surrounding or bordering the District. EPA has reviewed current monitoring data for SO_2 and finds monitor data within the District, and in areas surrounding the District, continue to show no nonattainment issues with regards to the SO_2 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 requirements under the CAA, that apply to SO_2 sources within the District. The District alleges with these measures, SO_2 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 SO_2 NAAQS. In light of these measures, the EPA does not expect SO_2 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 SO_2 NAAQS may be found in the TSD for this rulemaking action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2014-0701.

III. Response to Comments

During the comment period, EPA received four anonymous comments on the rulemaking. Of the comments, one comment was generally supportive of EPA's action and thus no response is

required. A second comment generally discussed CAA section 112 and hazardous air pollutant (HAP) standards but provided no specific information related to this rulemaking action, which was taken under section 110(a)(2)(D)(i)(I). EPA believes this comment was not germane to this rulemaking action, and thus no further response is provided. The remaining comments relevant to this action are summarized below with EPA's response.

Comment #1: The commenter stated that EPA could not approve the District's plan because no dispersion modeling was performed and EPA must perform dispersion modeling, including modeling for mobile sources, because, "it's not unlikely for DC to contribute to [nearby] states as DC is so small [transport is] inevitable." The commenter also raised concerns that EPA did not evaluate mobile source SO_2 emissions and SO_2 emissions from combustion of residential heating oil in EPA's transport evaluation.

Response #1: EPA disagrees with the commenter's assertion that dispersion modeling is needed, including modeling for mobile sources before EPA can approve a SIP submittal as meeting interstate transport requirements in CAA section 110(a)(2)(D); there is no requirement in this CAA provision that even suggests that dispersion modeling is needed for determining whether or not a state significantly contributes to a neighboring state's attainment with a specific NAAQS or interferes with another state maintaining a NAAQS. EPA has previously found that a weight of evidence (WOE) approach is sufficient to determine whether or not a state significantly contributes to another state.[3] EPA believes the WOE evaluation provided in EPA's

[3] *See*, e.g., Air Quality State Implementation Plans; Approvals and Promulgations: Utah; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS; May 20, 2013 (78 FR 29314); Final Rule 78 FR 48615 (August 9, 2013); Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule 76 FR 146516 (March 17, 2011), Final Rule 76 FR 34872 (June 15, 2011); Approval and Promulgations of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS, Proposed Rule, 80 FR 27121 (May 12, 2015), Final Rule 80 FR 47862 (August 10, 2015).

TSD is adequate to determine potential contribution from the District to other neighboring states; the analysis includes (1) an evaluation of the District's sources and trends, (2) a selection of a spatial scale in which EPA would evaluate potential contribution, (3) a review of monitored SO_2 data and control measures, and (4) an analysis of the information presented in the other three factors. Using these factors, EPA believes the District does not significantly contribute to any neighboring states' nonattainment or interfere with their ability to maintain the 2010 SO_2 NAAQS. Further, as to the commenter's claim that it is not unlikely for the District to contribute to nearby states due to its size, EPA notes that the commenter did not provide any justification to substantiate this claim.

In addition, EPA disagrees with the assertion that EPA did not address contribution from SO_2 emissions from mobile source or residential heating oil in the TSD. Mobile source contribution was discussed in Step 3 of the analysis in the TSD and is controlled in the District with a high enhanced inspection and maintenance (I/M) program which is within the District's approved SIP, EPA's Heavy-duty Highway Rule, EPA's Tier 1 Motor Vehicle Emission Standards, and EPA's Tier 2 Vehicle and Gasoline Sulfur Program, all of which are expected to reduce SO_2 emissions from the mobile source sector. Residential heating oil contribution was also discussed in Step 3 and is controlled by the District's 20 DCMR sections 801 and 803 which restrict the sulfur content of all commercially available residential fuel oil and completely ban the use of heavier fuel oils (numbers 5 and 6). The District's regulations of fuel oil are also contained in the District's federally enforceable SIP.

The controls described for both mobile sources and residential heating oil further supplement the low emissions profile of the District as discussed in the TSD and support EPA's assertion that

the District's SO_2 emissions do not significantly contribute to nonattainment in, or interfere with the maintenance of, another state with regards to the 2010 SO_2 NAAQS.

Comment #2: The second commenter stated that EPA did not address a March 28, 2017 Executive Order regarding the promotion of energy independence and economic growth. The commenter also similarly raised the issue of addressing interstate transport originating from mobile sources. The commenter concluded by saying EPA should repeal this rule until the effects of this rule are understood on the energy sector and the economy as a whole.

Response #2: As to the issue regarding mobile sources, EPA addressed this issue in Response #1. As to the March 28, 2017 Executive Order (EO)[4], EPA disagrees that this rulemaking should be "repealed" because EPA did not address the EO. The EO in question pertains to reviewing existing regulations, order, guidance documents, policies, and any other similar agency actions (collectively, agency action) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy. First, EPA does not believe this EO applies to this rulemaking action because, to the extent this rulemaking is considered an agency action under the EO, this action was not an existing agency action as of March 28, 2017, the date the EO was signed. Second, assuming *arguendo*, that this rulemaking action is considered an agency action under the EO, this rulemaking action does not create a burden as that term is defined in the EO. As defined in the EO, the term "burden" means, "to unnecessarily obstruct, delay, curtail, or otherwise impose significant cost on the siting, permitting, production, utilization, transmission, or delivery of energy resources." This rulemaking action does not affect the siting, permitting, production, utilization, transmission, or

[4] Based on the comment, EPA assumes the EO in question is EO 13738, Promoting Energy Independence and Economic Growth, signed March 28, 2017.

delivery of energy resources as this action merely approves the District's submission as meeting various CAA requirements, thus any required review under this EO is not applicable.

Third, EPA does not believe this EO applies to our regulatory action to approve the District's SIP submittal whereby we are approving that the District has a SIP to address interstate transport of emissions such that sources do not significantly contribute to nonattainment or interfere with maintenance in another state. If a SIP submittal from a state has everything required in the list contained in CAA section 110(a)(2) including required emission limitations, then CAA section 110(k)(3) requires that EPA must or "shall" approve the SIP submission. Thus, considering the plain language of the CAA in section 110(k)(3), EPA cannot consider disapproving or requiring changes to a state's SIP submittal based on a particular EO or statutory reviews. As explained in the TSD, EPA finds the District's SIP meets requirements in section 110(a)(2)(D). Thus, EPA shall approve the SIP submission.

IV. Final Action

EPA is approving the portions of the District's July 17, 2014 SIP revision addressing interstate transport for the 2010 1-hour SO_2 NAAQS as these portions meet the requirements in section 110(a)(2)(D)(i)(I) of the CAA.

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 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);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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. This action, addressing the District's interstate transport for the 2010 1-hour SO_2 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: March 16, 2018.

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 SO_2 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	7/18/14	**[Insert date of publication in the Federal Register], [Insert Federal Register citation]**	This action addresses CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.
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[FR Doc. 2018-06655 Filed: 4/2/2018 8:45 am; Publication Date: 4/3/2018]