



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2019-0362; FRL-10004-09-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality 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). The SIP revision addresses certain infrastructure requirements to implement, maintain, and enforce the 2015 ozone national ambient air quality standards (NAAQS), including the requirements for interstate transport. EPA is approving the District's infrastructure SIP revision for the 2015 ozone NAAQS, with exception of certain portions, 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-2019-0362. 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, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2021. Mr. Schulingkamp can also be reached via electronic mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On August 16, 2019 (84 FR 41942), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of most portions of the District of Columbia's SIP revision addressing infrastructure requirements for the 2015 ozone NAAQS. The formal SIP revision was submitted by the District through the Department of Environment and Energy (DOEE) on August 24, 2018.

On October 26, 2015, EPA issued a final rule strengthening both the primary and secondary ozone NAAQS for ground-level ozone to 70 parts per billion (ppb), based on the fourth-highest maximum daily 8-hour ozone concentration per year (hereafter the 2015 ozone NAAQS). 80 FR 65292. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP revision is commonly referred to as an

“infrastructure SIP revision.” Infrastructure SIP revisions must meet the various requirements of CAA section 110(a)(2), as applicable. Section 110(a)(2) includes a list of specific elements that each infrastructure SIP revision must address.

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

The District’s August 24, 2018 infrastructure SIP revision addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The August 24, 2018 SIP revision addresses the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS (also known as good neighbor provisions). The SIP revision provides technical information supporting the conclusion that the emissions from the District do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

The August 24, 2018 SIP revision did not address the portion of element (C) or element (I) referring to the nonattainment requirements of part D, title I of the CAA. Part D, title I of the CAA addresses SIP requirements and submission deadlines for designated nonattainment areas for each NAAQS. Such nonattainment SIP revisions are required if an area is designated nonattainment and would be due to EPA by the dates statutorily prescribed in subparts 1 through 5 under part D, title I of the CAA. EPA believes that because the CAA directs states to submit these nonattainment SIP requirements on a separate schedule, it is not necessary for states to include neither element (I) nor the portion of element (C) referring to part D as part of the infrastructure SIP revisions due three years after adoption or revision of any NAAQS.<sup>1</sup>

---

<sup>1</sup> See “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1)

On February 27, 2019, EPA determined that the District's August 24, 2018 SIP revision submittal was technically incomplete, in accordance with 40 CFR part 51, appendix V, with respect to the portions of the infrastructure elements in CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the Prevention of Significant Deterioration (PSD) permitting program under part C, title I of the CAA, because the District has not adequately addressed its part C requirement of having a SIP-approved PSD program. By contrast, EPA found the remainder of the August 24, 2018 SIP revision submittal to be administratively and technically complete in accordance with 40 CFR part 51, appendix V. As a result of this finding, EPA can only proceed in taking rulemaking action on the complete portions of the District's August 24, 2018 submittal.

Mandatory sanctions would not apply to the District under CAA section 179 as a result of EPA's incompleteness finding, because the failure to submit a PSD SIP revision is neither with respect to a submission that is required under CAA title I part D, nor in response to a SIP call under CAA section 110(k)(5). In addition, EPA is not subject to any further Federal implementation plan (FIP) duties, because there is already a PSD FIP for the District, which addresses the District's SIP deficiency<sup>2</sup>, which EPA issued to correct the District's PSD SIP deficiency, and that DOEE does not have to take further action for the FIP-based permitting program to be implemented.

### **III. Final Action**

---

and 110(a)(2).” Memorandum from Stephen D. Page, September 13, 2013, (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)).

<sup>2</sup> EPA promulgated the PSD FIP in 1980, and later amended it in 2003. The PSD FIP for the District is incorporated by reference in the District's SIP in 40 CFR 52.499, and it contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1). See 45 FR 52676, at 52741 (August 7, 1980), 68 FR 11316, at 11322 (March 10, 2003), and 68 FR 74483, at 74488 (December 24, 2003).

EPA is approving the District's August 24, 2018 infrastructure submittal as a revision to the District of Columbia SIP. EPA is approving the District's August 24, 2018 SIP revision as meeting the requirements of section 110(a)(2) of the CAA to implement, maintain, and enforce the 2015 ozone NAAQS, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for this NAAQS, with exception of those portions addressing requirements related to the PSD permitting program of part C, title I of the CAA in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), as these were found incomplete pursuant to 40 CFR part 51, appendix V. This final rulemaking action does not include action on section 110(a)(2)(I) or portions of section 110(a)(2)(C) referring to the permit program under part D, title I of the CAA.

#### **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);
- 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, pertaining to the District of Columbia's infrastructure requirements for the 2015 ozone NAAQS under CAA section 110(a)(2), 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 26, 2019.

Diana Esher,  
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. Amend § 52.470 in the table in paragraph (e) by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS” at 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 2015 Ozone NAAQS	District of Columbia	08/24/18	<u>[Insert date of publication in the Federal Register]</u> , <u>[Insert Federal Register citation]</u>	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by the FIP in 40 CFR 52.499.