



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2015-0750; FRL-9942-58-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Interstate Pollution Transport Requirements for the 2010 Nitrogen Dioxide Standards**

**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 of interstate transport pollution with respect to the 2010 nitrogen dioxide (NO<sub>2</sub>) 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-2015-0750. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., 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 [www.regulations.gov](http://www.regulations.gov) or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of

Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE.,  
5th floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements and are specified in section 110(a)(2) of the CAA. Particularly, section 110(a)(2)(D)(i)(I) of the CAA requires state SIPs to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the “good neighbor” provision of the CAA.

On December 4, 2015 (80 FR 75845), EPA published a notice of proposed rulemaking (NPR) for the District. In the NPR, EPA proposed approval of a SIP revision by the District addressing section 110(a)(2)(D)(i)(I) with respect to the 2010 NO<sub>2</sub> NAAQS. The formal SIP revision was submitted by the District on June 6, 2014.

## **II. Summary of SIP Revision**

The District submitted on June 6, 2014 a SIP revision to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 NO<sub>2</sub> NAAQS, including section 110(a)(2)(D)(i)(I) that pertains to interstate transport. This rulemaking action is addressing the portions of the District's June 6, 2014 infrastructure submittal for the 2010 NO<sub>2</sub> NAAQS that pertain to transport requirements.<sup>1</sup>

The District's June 6, 2014 transport submittal concludes that the District does not have sources that can contribute to nonattainment in, or interfere with maintenance by, any other state with respect to the 2010 NO<sub>2</sub> NAAQS. A detailed summary of EPA's review and rationale for proposing approval of this SIP revision as meeting section 110(a)(2)(D)(i)(I) of the CAA for the 2010 NO<sub>2</sub> NAAQS may be found in the NPR and the Technical Support Document (TSD) for this rulemaking action and will not be restated here. Both the NPR and TSD are available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2015-0750. No public adverse comments were received on the NPR.

## **III. Final Action**

EPA is approving the portions of the District's June 6, 2014 SIP revision submittal addressing interstate transport for the 2010 NO<sub>2</sub> NAAQS as a revision to the District SIP for purposes of meeting section 110(a)(2)(D)(i)(I) requirements with respect to this NAAQS.

## **IV. Statutory and Executive Order Reviews**

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<sup>1</sup> EPA has previously taken rulemaking action on the June 6, 2014 SIP revision to address all other applicable infrastructure requirements for the 2010 NO<sub>2</sub> NAAQS, with the exception of the transport elements in 110(a)(2)(D)(i)(I). *See* 80 FR 19538 (April 13, 2015).

## 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

### **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 requirements under the CAA for the 2010 NO<sub>2</sub> 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, Intergovernmental relations, Nitrogen dioxide.

Dated: February 4, 2016.

Shawn M. Garvin,  
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.

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2. In § 52.470, the table in paragraph (e) is amended by adding an entry for “Interstate Pollution Transport Requirements for the 2010 NO<sub>2</sub> NAAQS” to the end of the table 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
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Interstate Pollution Transport Requirements for the 2010 NO <sub>2</sub> NAAQS	Statewide	6/6/14	[ <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 NO <sub>2</sub> NAAQS.

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