



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0350; FRL-9950-73-Region 3]

Air Plan Approval; DC; Infrastructure Requirements for the 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the District of Columbia (the District) state implementation plan (SIP). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the Clean Air Act (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. The District has made a submittal addressing the infrastructure requirements for the 2012 annual fine particulate matter (PM_{2.5}) NAAQS. EPA is approving these revisions addressing the infrastructure requirements for the 2012 PM_{2.5} NAAQS in accordance with the requirements of the 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-2016-0350 at <http://www.regulations.gov>, or via email to Fernandez.cristina@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the 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. The 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: Ruth Knapp, (215) 814-2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On December 28, 2015, the District submitted a formal SIP revision to its SIP. The District’s SIP revision submittal addresses the following infrastructure elements for the implementation of

the 2012 annual PM_{2.5} NAAQS: section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The infrastructure SIP submittal does not address section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process.

II. Summary of EPA's Rationale for Proposing Approval

In accordance with 40 CFR part 51, appendix V, EPA found that the District's December 28, 2015 infrastructure SIP submittal is technically incomplete for the portions addressing the infrastructure elements in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the permitting program for prevention of significant deterioration (PSD), because the District has not adequately addressed the requirements of part C of title I of the CAA for having a SIP approved PSD permit program. EPA found the remainder of the SIP submittal to be administratively and technically complete. On May 11, 2016, EPA sent a letter to the District Department of Environment and Energy (DDOEE) notifying the District of this determination.

As a result of this incompleteness finding, EPA is not taking rulemaking action on the PSD related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2012 annual PM_{2.5} NAAQS, until the District through DDOEE submits a SIP to address the PSD permit program requirements of part C of title I of the CAA. EPA recognizes, however, that the District is already subject to a Federal Implementation Plan (FIP) containing the federal PSD program to correct the SIP deficiency and that DDOEE would not have to take further action for the FIP based permitting process to continue operating, as incorporated by reference in the District SIP

in 40 CFR 52.499.¹ EPA's PSD FIP for the District consists of the implementation of the federal PSD provisions as codified in 40 CFR 51.21, with the exception of paragraph (a)(1).

EPA does not anticipate any adverse consequences to DDOEE as a result of this incompleteness finding for the PSD related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the District's 2012 annual PM_{2.5} infrastructure SIP revision. First, mandatory sanctions would not apply to the District under CAA section 179 because the failure to submit a PSD SIP is neither required under title I part D of the CAA, nor in response to a SIP call under section 110(k)(5) of the CAA. Second, EPA is not subject to any further FIP duty from our finding of incompleteness because of the PSD FIP that is already been approved, which addresses the SIP deficiency.

EPA finds that the remainder of the District's December 28, 2015 infrastructure submittal provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 annual PM_{2.5} NAAQS. A detailed summary of EPA's review and rationale for approving the District's infrastructure SIP submittal for the 2012 annual PM_{2.5} NAAQS may be found in the technical support document (TSD) for this rulemaking action which is available on line at www.regulations.gov, Docket ID Number EPA-R03-OAR-2016-0350.

III. Final Action

¹ On August 7, 1980 (45 FR 52676, at 52741), EPA disapproved a number of states SIPs for PSD purposes, including the District of Columbia, and incorporated by reference portions of the federal PSD provisions in 40 CFR 52.21 into the implementation plans for those states. This FIP was subsequently amended to reflect amendments to the federal PSD rule, on March 10, 2003 (68 FR 11316, at 11322) and December 24, 2003 (68 FR 74483, at 74488). The PSD FIP is incorporated by reference in the District SIP in 40 CFR 52.499.

EPA is approving the District's December 28, 2015 infrastructure submittal for the 2012 annual PM_{2.5} NAAQS as meeting the requirements of section 110(a)(2) of the CAA, 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 the exception of the 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). This rulemaking does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process where necessary and applicable. 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 today's **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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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).

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 today's **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 which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2012 annual PM_{2.5} NAAQS for the District 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 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.

Subpart J—District of Columbia

In § 52.470, the table in paragraph (e) is amended by adding an entry for Section 110(a)(2)

Infrastructure Requirements for the 2012 PM_{2.5} NAAQS 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
<p>Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS</p>	<p>District of Columbia</p>	<p>12/28/15</p>	<p><u>[Insert date of Federal Register publication]</u> <u>[Insert Federal Register citation]</u></p>	<p>This action addresses the following CAA elements: 110(a)(2)(A), (B),(C), (D)(i)(I), D(i)(II),(E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.</p>
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[FR Doc. 2016-19390 Filed: 8/15/2016 8:45 am; Publication Date: 8/16/2016]