



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0701; FRL-9983-11-Region 3]

Air Plan Approval; District of Columbia; State Implementation Plan for the Interstate Transport Requirements for the 2008 Ozone 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) that pertains to the good neighbor and interstate transport requirements of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). The CAA's good neighbor provision requires EPA and states to address the interstate transport of air pollution that affects the ability of other states to attain and maintain the NAAQS. Specifically, the good neighbor provision requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in another state. The District submitted a SIP revision on June 13, 2014 that addresses the interstate transport requirements for the 2008 ozone NAAQS. On July 5, 2018, EPA published a proposed rule for just the good neighbor provision of the District's June 13, 2014 submittal. EPA is approving the District's SIP as having adequate provisions to meet the requirements of the good neighbor provision for the 2008 ozone NAAQS in accordance with section 110 of the 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 <http://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 <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 13, 2014, the District Department of the Environment (DDOE) on behalf of the District submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. On April 13, 2015 (80 FR 19538), EPA approved all parts of the District’s June 13, 2014 submittal with the exception of the portion of the submittal that addressed section 110(a)(2)(D)(i)(I) of the CAA. Section 110(a)(2)(D)(i)(I), also called the good neighbor provision, consists of two prongs that require that a state’s¹ 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,

¹ The term state has the same meaning as provided in CAA section 302(d) which specifically includes the District of Columbia.

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).

On July 5, 2018 (83 FR 31350), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, approving the portion of the June 13, 2014 District SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.²

II. Summary of SIP Revision and EPA Analysis

In its June 13, 2014 submittal, the District identified the implemented regulations within its SIP that limit nitrogen dioxide (NO_x) and/or volatile organic compound (VOC) emissions from District sources.³ The District indicates that there are no electric generating units (EGUs)⁴ or other large industrial sources of NO_x emissions within the District. In the submittal, the District also included information on non-EGUs and mobile sources and listed the SIP-approved measures that help to reduce NO_x and VOC emissions from non-EGU and mobile sources within the District. In the submittal, the District points out that it will continue to rely on federal measures to reduce NO_x emissions from onroad and nonroad engines. The District states its sources are already well controlled, and states further reductions beyond the District’s current SIP measures are not economically feasible.

EPA evaluated the District’s submittal for the 2008 ozone NAAQS, considering: Ozone

² All the other infrastructure SIP elements for the District for the 2008 ozone NAAQS were addressed in a separate rulemaking. See 80 FR 19538 (April 13, 2015).

³ Both NO_x and VOCs are precursors to ozone formation.

⁴ The District’s last remaining EGUs were decommissioned in 2012, in part to meet permit requirements incorporated into the District’s Regional Haze SIP. 77 FR 5191 (February 2, 2012).

precursor emissions; an analysis of District source sectors; and in-place controls and regulations. Due to the District's small number of sources and the high cost of further reductions, EPA proposed in its July 5, 2018 NPR that the District's SIP, as presently approved, contains adequate measures to prevent District sources from interfering with maintenance or contributing significantly to nonattainment in another state for the 2008 ozone NAAQS. The rationale for EPA's proposed action was discussed in greater detail in the NPR and accompanying technical support document (TSD) and will not be restated here.

In this rulemaking action, EPA is approving one portion of the District's June 13, 2014 submittal—the portion addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA. EPA previously acted on other portions of Delaware's June 13, 2014 SIP submittal for the 2008 ozone NAAQS.⁵

III. Comments and EPA's Response

EPA received a total of four anonymous comments on the July 5, 2018 NPR. All of the comments received are included in the docket for this action. Three of the comments did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of the District's submittal. Therefore, EPA is not responding to those comments. EPA did receive one comment considered to be relevant to this rulemaking action.

The commenter indicates that EPA was supposed to take action on the District's SIP revision within 12 months of receiving the SIP submittal. The commenter also indicates the length of time (4 years) it took for EPA to approve the SIP revision from the time of its submittal and

⁵ On April 13, 2015 (80 FR 19538), EPA approved portions of the District's June 13, 2014 submittal for the 2008 ozone NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In that action, EPA stated it would take later action on the portion of the June 13, 2014 SIP submittal addressing section 110(a)(2)(D)(i)(I) of the CAA.

questions if transported pollution could have been eliminated if SIP revisions like this one were approved in a timely manner. The commenter asks what air quality and human health impacts the delay of this action has had on neighboring states.

EPA acknowledges that it missed the statutory deadline to take action on the good neighbor portion of the District's June 13, 2014 SIP submittal.⁶ However, at this time, EPA is taking final action on this SIP revision, and by doing so it will meet all such outstanding obligations under the CAA. The commenter provided no analysis of the statutory consequences, if any, from the action. Further, EPA disagrees with the commenter's questioning that the delayed action on the good neighbor portions of the District's SIP revision has impacted air quality and human health in neighboring states. As explained in the NPR, EPA believes that the District's SIP, as presently approved, contains adequate measures to prevent District sources from interfering with other states' attainment and/or maintenance for the 2008 ozone NAAQS. Thus, EPA's late action on the good neighbor portion of the District of Columbia's June 13, 2014 SIP submittal did not cause any delay in air quality and human health protections as the SIP relies on already in-place regulations and controls that prevent District sources from significantly contributing to nonattainment, or interfering with maintenance, of the 2008 ozone NAAQS in another state.

IV. Final Action

EPA is approving the portion of the June 13, 2014 District SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS.

⁶ For clarification, section 110(k)(2) requires EPA to take action 12 months after a SIP revision becomes complete, not 12 months after it is submitted, as the commenter indicates.

On April 13, 2015 (80 FR 19538), EPA approved the following infrastructure elements or portions thereof from the June 13, 2014 submittal: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action approves the remaining portions of the June 13, 2014 SIP revision, which address prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA, also known as the good neighbor provision. EPA did not take action upon these elements in the Agency's prior SIP approval action, published on April 13, 2015 (80 FR 19538).

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 of Columbia's good neighbor provision for the 2008 ozone 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,
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 21, 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 new entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” after the existing entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” 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 2008 Ozone NAAQS	District of Columbia	6/13/14	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	This action addresses CAA element 110(a)(2)(D)(i)(I).
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[FR Doc. 2018-18855 Filed: 8/30/2018 8:45 am; Publication Date: 8/31/2018]