



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-0734; FRL-13009-01-R3]

Air Plan Approval; District of Columbia; Creation of Synthetic Minor Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Department of Energy and Environment (DOEE, the “Department”) on behalf of the District of Columbia (DC, the “District”). The revisions pertain to creating a synthetic minor permit program and resolving the regulatory differences between the District’s current regulations and those regulations approved previously in Chapters 1 and 2 of the Air Quality Regulations. The intended effect of this action is to enable DC to create federally enforceable synthetic minor permit conditions for sources of criteria pollutants pursuant to section 110 of the Clean Air Act (CAA, the “Act”). This action is being taken under the CAA.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2025-0734 at www.regulations.gov, or via email to Talley.David@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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 www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at he.yongtian@epa.gov.

SUPPLEMENTARY INFORMATION: On August 11, 2023, the Department of Energy and Environment (DOEE) submitted a revision to the DC SIP to create a synthetic minor permit program and address regulatory differences between the District's current regulations and those approved previously in Chapters 1 and 2 of the Air Quality Regulations. DOEE submitted the SIP revision request along with a SIP revision related to Startup, Shutdown, and Malfunction (SSM). Those proposed SIP Revisions related to Chapter 1 and SSM will be processed in a separate SIP action.

I. Background

A SIP-approved minor source permitting program can include provisions for issuing permits that establish federally enforceable emissions limits to restrict the Potential to Emit (PTE) of certain pollutants below major stationary source and major modification applicability thresholds. "Synthetic minor" permits establish these federally enforceable emission limits for sources obtaining construction permits, and also establish these emission limits in the corresponding operating permits.

This DC SIP revision is intended to create a synthetic minor permit program through provisions in title 20 of the District of Columbia Municipal Regulations (20 DCMR), specifically

20 DCMR Chapter 2 Section 200.6 and 200.7 as amended, in conjunction with other provisions that already existed in 20 DCMR Chapter 2 and were previously approved into the DC SIP. These provisions enable a new source or modification of an existing source to limit its PTE below major source thresholds in order to qualify as minor and avoid major new source review (NSR) applicability, including the prevention of significant deterioration (PSD) in attainment areas and nonattainment NSR (NNSR) in nonattainment areas. These provisions also allow new sources or modifications of existing sources to avoid major source status under title V of the CAA through limiting PTE. A stationary source may request federally enforceable permit limits to limit its PTE to below major source threshold, thus becoming a minor source “synthetically.” The intended effect is similar to federally enforceable state operating permit (FESOP) programs established in many states. State operating permit programs which have been incorporated into the SIP render operating permits issued pursuant to such a program federally enforceable. This FESOP mechanism allows sources to reduce their PTE to below the title V applicability thresholds and thereby legally avoid being subject to title V.

On June 28, 1989 (54 FR 27274), the EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits (“June 28, 1989 Final Rule”).¹ Permits issued pursuant to an operating permit program meeting these criteria and approved into the SIP are considered federally enforceable. The EPA has encouraged States to consider developing such programs in conjunction with title V operating permit programs for the purpose of creating federally enforceable limits on a source’s PTE. The EPA published a guidance document on September 18, 1992 entitled “Limitation of Potential to Emit with Respect to Title V Applicability Thresholds” to address a state's ability to utilize a title V permit, or other federally-enforceable means, to limit the PTE for various purposes.² On January 22, 1996, the EPA released the Seitz memo “EPA Interim Policy

¹ See “Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans,” June 28, 1989 (54 FR 27274).

² www.epa.gov/sites/default/files/2015-08/documents/threshld.pdf.

on Federal Enforceability Requirement for Limitations on Potential to Emit.”³ This mechanism would enable sources to reduce their PTE of criteria pollutants to below the title V applicability thresholds and avoid being subject to title V.

The purpose of DC’s synthetic minor program is to provide sources a mechanism to avoid Title V and new source review major source applicability and make those synthetic minor permit conditions both enforceable by the District and federally enforceable. Therefore, requirements for the development of a FESOP program are appropriate criteria with which to evaluate the DOEE synthetic minor program.

II. Summary of SIP Revision and EPA Analysis

A. SIP revisions

The District of Columbia submitted a SIP revision to create a synthetic minor permitting program. The revisions are also intended to address regulatory differences between the District’s current regulations and those regulations approved previously, thus clarifying and resolving errors in the existing regulations.

Section 200 (General Permit Requirements) of 20 DCMR Chapter 2 (General and Non-attainment Area Permits) establishes synthetic minor program provisions. Section 200.6 allows the Department to establish a condition in a permit issued pursuant to this chapter that limits, in a manner that is enforceable as a practical matter, emissions from a source so as to avoid applicability of the permitting requirements of 20 DCMR Section 300.1 (i.e. DC’s title V regulations). Essentially, this provision creates a synthetic minor operating permit program, along with other provisions in 20 DCMR Chapter 2. Section 200.7 allows the Department to establish a condition in a permit issued pursuant to this chapter that limits, in a manner that is enforceable as a practical matter, emissions from a source so as to avoid applicability of a District or Federal air quality regulation, other than the requirements of 20 DCMR section 300.1, except when prohibited by another District or Federal regulation. Essentially, the provision

³ www.epa.gov/sites/default/files/2015-08/documents/pottoemi.pdf.

creates a synthetic minor preconstruction permit program. Through provisions in sections 200.6, 200.7 and other sections in 20 DCMR Chapter 2, DOEE establishes a synthetic minor program to issue synthetic minor operating permits and synthetic minor preconstruction permits in DC.

Other substantive changes in Chapter 2 include revisions in the following sections: 1) in 20 DCMR section 200.8 establishes a source category permit covering a group of similar sources or emission units; 2) in 20 DCMR sections 200.9, 200.10, 200.11, 200.12, 200.13, 200.14, and 200.15 cover administrative aspects of permits issued in Chapter 2 including applications, data requirements, fees, signature process, exceptions and compliance; 3) in 20 DCMR section 202, Amendment, Suspensions, Revocation, and Denial of Permits, revisions in sections 202.1, 202.2, 202.6, 202.7, and 202.8 are related to requirements and procedures on amendment, suspension, revocation, and denial of permits; and, 4) in 20 DCMR section 210, Notice and Comment Prior to Permit Issuance, revisions in sections 210.3, 210.4, 210.5, and 210.6 are related to requirements and procedures on public notice and comment prior to permit issuance.

B. Evaluation of synthetic minor program under section 110 of the Act

In the June 28, 1989 Final Rule, the EPA amended the definition of “federally enforceable” to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source’s maximum potential emission rates or PTE. The June 28, 1989 Final Rule also established five criteria for the EPA to approve a state operating permit program. The following describes each of the criteria for approval of a state operating permit program for the issuance of federally enforceable operating permits for purposes of limiting a source’s PTE and how DOEE’s SIP submittal seeking to establish a synthetic minor program satisfies those criteria.

(1) The State operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by the EPA into the SIP.

On August 11, 2023 DOEE submitted a SIP revision request for approval of its synthetic

minor permit program. The DC permit program codified in 20 DCMR Chapter 2 provides the framework for general and non-attainment area permits issuance. DC revised 20 DCMR Chapter section 200.6 to establish conditions for a source to avoid title V permit requirements, and section 200.7 to establish conditions to avoid major NSR requirements and applicability of other major source requirements. DC has requested these revisions to be approved into the DC SIP.

(2) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of the EPA's underlying regulations may be deemed not "federally enforceable" by the EPA.

The DOEE permit program in 20 DCMR Chapter 2 section 200.15 explicitly requires that a person shall comply with the conditions of any permit issued pursuant to this chapter. The general provisions of the permit program at sections 200.6 and 200.7 establish that permit conditions must be enforceable as a practical matter. Furthermore, the permit program's definitions of "enforceable as a practical matter" and "federally enforceable" in 20 DCMR Chapter 1 section 199 require that permit terms must meet the EPA's minimum criteria for Federal enforceability, including public participation and practical enforceability requirements.

(3) The State operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP. The State operating permit program also requires that the program not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of The Act).

The DC synthetic minor program established in section 200.6 and 200.7, requires that all limits in permits issued pursuant to this Chapter shall be enforceable as a practical matter, and

limits must not be designated as enforceable only by the District, i.e., federally enforceable. Permits shall contain emission limitations and other requirements that are at least as stringent as any applicable limitation in the SIP. The program also establishes that no permit shall contravene the requirements of any other District or Federal regulations.

(4) The limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter.

Sections 200.6 and 200.7 state that a permit condition must be “enforceable as a practical matter.” DC regulations in 20 DMCR section 199 define “federally enforceable” and “enforceable as a practical matter”. The definition of “Federally enforceable” in section 199 matches verbatim the definition in 40 Code of Federal Regulations (CFR) 51.165. The DOEE permit program defines “enforceable as a practical matter” to mean that a permit must specify emission limitation or standards the source subject to, the time period for the limitation, and the method to determine compliance (See 20 DCMR section 199). Sufficient recordkeeping, reporting, and monitoring provisions must also be provided to ensure compliance.

(5) The permits are issued subject to public participation. This means that the State agrees, as part of its program, to provide the EPA and the public with timely notice of the proposal and issuance of such permits, and to provide the EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide an opportunity for public comment on the permit applications prior to issuance of the final permit (54 FR 27274, June 28, 1989).

The “federally enforceable” synthetic minor permits issued under the permit program are subject to public participation. The permit program’s public participation provisions at 20 DMCR Chapter 2 section 210 require that for a permit to be federally enforceable the draft permit must be subject to an adequately publicized 30-day public comment period. The permit program also provides the opportunity for a public hearing. The general provisions of the permit program at section 210.6 require DOEE to provide the EPA with a copy of the draft permit and

final permit on a timely basis.

Therefore, DC's synthetic minor program is consistent with the five criteria for approving a state operating permit program into a SIP. Permits issued under an approved program are federally enforceable and may be used to limit the PTE for sources of criteria air pollutants. In meeting those five requirements as discussed above, DC's synthetic minor program also meet the requirements of 40 CFR 51.160 through 165 on legally enforceable procedures, public availability of information, administrative procedure and permit requirements.

Section 110(a)(2)(C) of the CAA requires that SIPs include a program to regulate the construction and modification of stationary sources as necessary to ensure that the national ambient air quality standards (NAAQS) are maintained. 20 DMCR Chapter 2 section 200 and section 204 have been part of the DC SIP for many years and meet the requirements in section 110(a)(2)(C) of the Act which requires all SIPs to provide for the regulation of the modification and construction of any stationary source within the areas covered by the plan implementation as necessary to assure that NAAQS are achieved. CAA section 110(l) provides that revision to an implementation plan submitted by a state under this chapter shall be adopted by such state after reasonable notice and public hearing. The DC SIP submission provided documentation of public comment and public hearing notices of the DC rulemaking. The DC SIP submission met the public notice and public hearing requirements. Further, because the permits issued under DC's synthetic minor permit program will be federally enforceable, and the limitations, controls and requirements in the permits will be permanent, quantifiable and enforceable as a practical matter, the EPA finds that these revisions in DC SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. Therefore, the proposed DC SIP revision meets the requirements of 110 of the CAA.

III. Proposed Action

The EPA has reviewed DC's proposed changes to the DOEE's permit program in 20

DCMR Chapter 2 and has determined that they meet all applicable Federal requirements for approval. The EPA proposes to approve the District of Columbia's August 11, 2023 SIP revision for creating a synthetic minor permit program, pursuant to section 110 of the CAA and the approval criteria specified in the June 28, 1989 Federal Register document (54 FR 27274-27286).

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA proposes to incorporate by reference the DC air quality regulations in Chapter 2 of 20 DCMR, as describe in section II of this document. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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