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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC104-2052; FRL-9955-98-Region 3]

Air Plan Approval; District of Columbia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the District of Columbia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the District of Columbia Department of Energy and Environment (DoEE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective March 21, 2017.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. To view the material at the EPA, Region III Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814-3376 or by email at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally

approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919), March 19, 2009 (74 FR 11647), and February 22, 2011 (76 FR 9652), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following District of Columbia regulations:

A. Added Regulations and Statutes

- Chapter 2 (General and Non-attainment Area Permits), sections 208 and 210.
- Chapter 7 (Volatile Organic Compounds), sections 714, 755 through 758 inclusive, and 763 through 778 inclusive.
- DC Official Code, Title I, Chapter 11A, (Government Ethics and Accountability), sections 1-1161.01(Definitions), 1-1161.23 (Conflicts of Interest), 1-1161.24 (Public Reporting), and 1-1161.25 (Confidential Disclosure of Financial Interest).

B. Revised Regulations

- Chapter 1 (General), sections 100 and 199.
- Chapter 2 (General and Non-attainment Area Permits), sections 200, 204, and 299.
- Chapter 7, (Volatile Organic Compounds), sections 700, 710, 715 through 737 inclusive, 743 through 749, 751 through 754 inclusive, and 799.
- Chapter 10, title change to Air Quality—Non EGU Limits on Nitrogen Oxides Emissions, as well as title changes and revisions to sections 1001 through 1004.

C. Removed Regulations

- Chapter 2 (General and Non-attainment Area Permits), section 206
- Chapter 7, (Volatile Organic Compounds), sections 707, 708, 738 through 742 inclusive, and 750.
- Chapter 10 (Air Quality—Non EGU Limits on Nitrogen Oxides Emissions), sections 1005 through 1014 inclusive, and 1099.

II. EPA Action

In this action, EPA is doing the following:

A. In 40 CFR 52.470(b)

Announcing the update to the IBR material as of July 1, 2016 and revising the text within 40 CFR 52.470(b).

B. In 40 CFR 52.470(c)

- Correcting a typographical error in the title for chapter 7, section 702.

- Removing the five existing entries for chapter 7, section 799 with an EPA approval date prior to April 29, 2013.

C. In 40 CFR 52.470(e)

Revising the Applicable Geographic Area from “Statewide” to “District of Columbia” for the following titled areas currently found within 52.470(e): Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; the Clean Air Act (CAA) section 128 requirements in relation to State Boards; section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS); Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO₂) NAAQS; Emergency Air Pollution Plan; and the Interstate Pollution Transport Requirements for the 2010 NO₂ NAAQS.

III. Good Cause Exemption

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the Code of Federal Register benefits the public by removing outdated citations and incorrect table entries.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the District of Columbia and federally effective prior to July 1, 2016. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the

Director of the Federal Register in the next update to the SIP compilation.¹ The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or 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

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) 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 (Pub. L. 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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for the District of Columbia.

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.

Dated: March 7, 2017.

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. Section 52.470 is amended by:
 - a. Revising paragraph (b);
 - b. Revising paragraph (c) table entry for Section 702;
 - c. Removing the second through sixth entries for Section 799 from paragraph (c) table; and
 - d. In paragraph (e), by revising the following entries: Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; CAA section 128 requirements in relation to State Boards; Section 110(a)(2) Infrastructure Requirements for the 2010 NO₂ NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 SO₂ NAAQS; Emergency Air Pollution Plan; and Interstate Pollution Transport Requirements for the 2010 NO₂ NAAQS.

The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after July 1, 2016 for the District of Columbia, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1). No additional revisions were made to paragraph (d) between December 1, 2010 and July 1, 2016.

¹ 62 FR 27968 (May 22, 1997).

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To

obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to July 1, 2016 for the District of Columbia at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.
(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 702	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.	3/15/85	10/27/99, 64 FR 57777.	
*	*	*	*	*

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
Regional Haze Plan	District of Columbia	10/27/11	2/2/12, 77 FR 5191.	
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	District of Columbia	7/18/13	10/22/13, 78 FR 62455.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
CAA section 128 requirements in relation to State Boards.	District of Columbia	7/18/13	10/22/13, 78 FR 62455.	
Section 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS.	District of Columbia	6/9/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2010 SO ₂ NAAQS.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Emergency Air Pollution Plan.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the requirements of 40 CFR 51, subpart H for particulate matter, sulfur oxides (SOX), carbon monoxide (CO), and ozone, as well as section 110(a)(2)(G) of the CAA for the 2008 ozone, 2010 SO ₂ , and 2010 NO ₂ NAAQS.
Interstate Pollution Transport Requirements for the 2010 NO ₂ NAAQS.	District of Columbia	6/6/14	2/19/16, 81 FR 8406	This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I), or the good neighbor provision, for the 2010 NO ₂ NAAQS.

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0695; FRL-9957-41-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Inspection and Maintenance Program Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is taking direct final action to correct a previously approved diesel inspection and maintenance (I/M) program provision in Albuquerque/Bernalillo County's State Implementation Plan (SIP). This action is based on our determination that at the time EPA approved the diesel I/M Program the State did not have the legal authority to expand its program to require the testing of 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds.

DATES: This rule is effective on May 22, 2017 without further notice, unless the EPA receives relevant adverse comment by April 20, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2011-0695, at <http://www.regulations.gov> or via email to walsers.john@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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 Mr. John Walser, 214-665-7128, walsers.john@epa.gov. 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>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, 214-665-7128, walsers.john@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. John Walser or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. Requirements for SIP Submittals and EPA Action on SIP Submittals

Congress enacted the National Ambient Air Quality Standards (NAAQS) and SIP requirements in the 1970 CAA Amendments. CAA section 110(a)(1) requires that states adopt and submit to EPA for approval SIPs that implement the NAAQS. CAA section 110(a)(2) contains a detailed list of requirements that all SIPs must include to be approvable by EPA. Of particular relevance to this action is subparagraph (E)(i) of CAA section 110(a)(2) which provides that SIPs must provide “necessary assurances that the state . . . will have adequate . . . authority under State (and as appropriate, local) law to carry out such [an] implementation plan.” As applicable to inspection and maintenance programs, this provision means that EPA may approve the submitted I/M provisions as part of the SIP only if EPA is satisfied that the state

will have adequate legal authority under state law to implement the program.

B. Authority for EPA To Revise Previous Action on SIPs

EPA has authority to revise its previous actions taken on SIP submittals. Two mechanisms are available to EPA: The error correction mechanism provided under CAA section 110(k)(6), and EPA's general administrative authority to reconsider its own actions under CAA sections 110 and 301(a), in light of case law. CAA section 110(k)(6) provides as follows:

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Therefore, the Administrator has the authority to “determine[]” when a SIP approval was “in error,” and may then revise the SIP approval “as appropriate,” in the same manner as the approval, and without requiring any further submission from the state.¹

C. Albuquerque/Bernalillo County Submission

On August 1, 2012, EPA proposed to approve revisions to the SIP for Air Quality submitted by the City of Albuquerque/Bernalillo County (the County) area on July 28, 2011 pursuant to the Clean Air Act. (77 FR 45530). These revisions included provisions that expanded the County's I/M program to include 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds. The County submitted a SIP Completeness Checklist pursuant to 40 CFR 51, Appendix V in which it certified that it had the necessary legal authority to include compression ignition powered (diesel) engine testing in its I/M program. We received no comments on this proposal and finalized our approval on October 31, 2012. (77 FR 65821).

¹ Please see the “Legal Support” document in the docket for a more in depth explanations of the EPA's authority to revise previous SIP actions.