

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0362; FRL–9998–32–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision from the District of Columbia (the District). This SIP revision addresses certain infrastructure requirements to implement, maintain, and enforce the 2015 ozone national ambient air quality standards (NAAQS), including the requirements for interstate transport. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0362 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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:

Emlyn Vélez-Rosa, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2038. Ms. Vélez-Rosa can also be reached via electronic mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On August 24, 2018, the District Department of Environment and Energy (DOEE) submitted a revision to its SIP addressing infrastructure requirements for the 2015 ozone NAAQS.

I. Background

On October 26, 2015, EPA issued a final rule strengthening both the primary and secondary ozone NAAQS for ground-level ozone to 70 parts per billion (ppb), based on the fourth-highest maximum daily 8-hour ozone concentration per year (hereafter the 2015 ozone NAAQS). 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP revision is commonly referred to as an “infrastructure SIP revision.” Infrastructure SIP revisions must meet the various requirements of CAA section 110(a)(2), as applicable. Section 110(a)(2) includes a list of specific elements that each infrastructure SIP revision must address. The infrastructure requirements of section 110(a)(2) are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA for implementation of a particular NAAQS.

Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP revisions.¹ EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 guidance document titled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (“the 2013 Infrastructure SIP Guidance”), as well as in numerous agency actions, including EPA’s prior action on the District’s infrastructure SIP revision to address the 2012 fine particulate matter (PM_{2.5}) NAAQS. See 81 FR 54504 (August 16, 2016). A copy of the 2013 Infrastructure Guidance can be found in the docket for this rulemaking action.

actions on infrastructure submissions. Unless otherwise noted below, EPA is following that existing approach in acting on the District’s infrastructure SIP revision. In addition, in the context of acting on such infrastructure SIP revision, EPA evaluates the submitting state’s overall SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.² EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. Summary of SIP Revision and EPA Analysis

On August 24, 2018, DOEE submitted a formal SIP revision to EPA to satisfy the infrastructure requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS. This SIP revision addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The August 24, 2018 SIP revision addresses the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS (also known as good neighbor provisions). The SIP revision provides technical information supporting the conclusion that the emissions from the District do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

The August 24, 2018 SIP revision did not address the portion of element (C) or element (I) referring to the nonattainment requirements of part D, title I of the CAA. Part D, title I of the CAA addresses SIP requirements and submission deadlines for designated nonattainment areas for each NAAQS. Such nonattainment SIP revisions are required if an area is designated nonattainment and would be due to EPA by the dates statutorily prescribed in subparts 1 through 5 under part D, title I of the CAA. EPA believes that because the CAA directs states to submit these nonattainment SIP requirements on a separate schedule, it is not necessary for states to include neither element (I) nor the portion of element (C) referring to part D as part of the infrastructure SIP revisions due three years after adoption or revision of any NAAQS.³

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16–71933 (August 30, 2018).

³ See EPA’s 2013 Infrastructure SIP Guidance.

Upon receipt, EPA evaluated the District's August 24, 2018 SIP revision submittal for technical and administrative completeness, in accordance with 40 CFR part 51, appendix V. EPA determined that the submittal was technically incomplete with respect to the portions of the infrastructure elements in CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the Prevention of Significant Deterioration (PSD) permitting program under part C, title I of the CAA, because the District has not adequately addressed its part C requirement of having a SIP-approved PSD program. By contrast, EPA found the remainder of the August 24, 2018 SIP revision submittal to be administratively and technically complete in accordance with 40 CFR part 51, appendix V.

On February 27, 2019, EPA sent a letter to DOEE notifying the District of this completeness determination. As a result of this finding, EPA can only proceed in taking rulemaking action on the complete portions of the District's August 24, 2018 submittal, and cannot take rulemaking action on the PSD-related portions of CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2015 ozone NAAQS, until DOEE submits a SIP revision to address the PSD permit requirements of part C, 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,⁴ which EPA issued to correct the District's PSD SIP deficiency, and that DOEE does not have to take further action for the FIP-based permitting program to be implemented. Notably, EPA does not anticipate any adverse consequences to DOEE from the February 27, 2019 incompleteness finding for the PSD-related portions of the elements listed above for the District's 2015 ozone NAAQS submission. Mandatory sanctions would not apply to the District under CAA section 179, because the failure to submit a PSD SIP revision is neither with respect to a submission that is required under CAA title I part D, nor in response to a SIP call under CAA section 110(k)(5). In addition, EPA is not subject to any further FIP duties from this incompleteness finding, because there is already a PSD FIP for the District, which addresses the

District's SIP deficiency. This rulemaking action is only addressing the complete portions of the District's August 24, 2018 infrastructure SIP revision submittal for the 2015 ozone NAAQS.

Based upon EPA's review of the District's August 24, 2018 SIP revision, EPA believes that the District has met its obligations under CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), with exception of the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), for the reasons discussed earlier. Thus, EPA determines that the August 24, 2018 SIP revision adequately satisfies the District's applicable infrastructure requirements, or portions thereof, listed above for the 2015 ozone NAAQS. A detailed summary of EPA's review and rationale for taking rulemaking action on the District's infrastructure SIP revision may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0362.

III. Proposed Action

EPA is proposing to approve the District's August 24, 2018 SIP revision as meeting the requirements of section 110(a)(2) of the CAA to implement, maintain, and enforce the 2015 ozone NAAQS, 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 exception of those portions addressing 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), which EPA has deemed incomplete pursuant to 40 CFR part 51, appendix V. This proposed rulemaking action does not include action on section 110(a)(2)(I) or portions of section 110(a)(2)(C) referring to the permit program under part D, title I of the CAA. EPA is soliciting public comments on the issues discussed in this document which will be considered before taking final rulemaking action.

IV. Statutory and Executive Order Reviews

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 proposed 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 (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 proposed rule, pertaining to the District of Columbia's infrastructure requirements for the 2015 ozone NAAQS under CAA section 110(a)(2), 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

⁴ EPA promulgated the PSD FIP in 1980, and later amended it in 2003. The PSD FIP for the District is incorporated by reference in the District's SIP in 40 CFR 52.499, and it contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1). See 45 FR 52676, at 52741 (August 7, 1980), 68 FR 11316, at 11322 (March 10, 2003), and 68 FR 74483, at 74488 (December 24, 2003).

Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 5, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2019-17667 Filed 8-15-19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0299 and EPA-R03-OAR-2019-0349; FRL-9998-34-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; State Implementation Plans for the Cross-State Air Pollution Rule and for the Interstate Transport Requirements of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the State of West Virginia, one submitted on March 27, 2018, and one on June 5, 2019. The June 5, 2019 submittal consists of a regulation that adopts the Cross-State Air Pollution Rule (CSAPR). Under the Federal CSAPR, large electricity generating units (EGUs) in West Virginia are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_x), one of CSAPR's two Federal trading programs for annual emissions of sulfur dioxide (SO₂), and one of CSAPR's two Federal trading programs for ozone season emissions of NO_x. This action would approve the State's regulation requiring large West Virginia EGUs to participate in new CSAPR state trading programs for annual NO_x, annual SO₂, and ozone season NO_x emissions integrated with the CSAPR Federal trading programs, replacing the corresponding FIP requirements. EPA is proposing to approve the SIP revision because the submittal meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of the SIP revision would automatically eliminate West Virginia EGU's requirements under the corresponding CSAPR FIPs, thereby

addressing West Virginia's interstate transport (or "good neighbor") obligations for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS), the 2006 PM_{2.5} NAAQS, and the 2008 ozone NAAQS. Like the CSAPR FIP requirements that would be replaced, approval of the SIP revision would fully satisfy West Virginia's good neighbor obligations for the 1997 PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, and the 2008 ozone NAAQS.

In conjunction with EPA's proposed approval of West Virginia's June 5, 2019 CSAPR regulation, EPA is also proposing to approve West Virginia's March 27, 2018 submittal related to West Virginia's good neighbor obligations under the 2008 ozone NAAQS. These actions are being taken in accordance with the CAA.

DATES: Written comments must be received on or before September 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2013-0299 (for the West Virginia 2008 ozone good neighbor SIP) and EPA-R03-OAR-2019-0349 (for the West Virginia CSAPR SIP) at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, Planning & Implementation Branch (3AD30), Air and Radiation Division, U.S.

Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Ms. Powers can be reached at (215) 814-2308, or via electronic mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On March 27, 2018, West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), supplemented its February 17, 2012 infrastructure SIP for the 2008 ozone NAAQS to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I). The March 27, 2018 submittal requested conditional approval contingent on the State's adoption of the emission reduction requirements of 40 CFR 97, subpart EEEEE, the CSAPR NO_x Ozone Season Group 2 Trading Program. On June 5, 2019, EPA received a SIP revision submittal from WVDEP seeking to incorporate the requirements of 40 CFR 97, subparts AAAAA (CSAPR NO_x Annual Trading Program), CCCCC (CSAPR SO₂ Group 1 Trading Program), and EEEEE (CSAPR NO_x Ozone Season Group 2 Trading Program) into the West Virginia SIP (West Virginia CSAPR SIP). The June 5, 2019 submittal requested that EPA fully approve the March 27, 2018 submittal instead of the conditional approval West Virginia originally requested.

I. Background

1. Cross-State Air Pollution Rule (CSAPR)

On August 8, 2011, and October 26, 2016, EPA issued the Cross-State Air Pollution Rule (CSAPR) and the CSAPR Update, respectively, to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution.¹ As amended (including by the CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of sulfur dioxide (SO₂) and/or oxides of nitrogen (NO_x) in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four national ambient air quality standards (NAAQS): The 1997 annual fine particulate matter (PM_{2.5}) NAAQS, the 2006 24-hour PM_{2.5} NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone season NO_x by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of general increasing stringency:

¹ See 76 FR 48208 (August 8, 2011) and 81 FR 74504 (October 26, 2016).