

By direction of the Commission.

Donald S. Clark,

Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0139; FRL-9292-9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the District of Columbia (the District) pursuant to the Clean Air Act (CAA or the Act) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) and the 2006 PM_{2.5} NAAQS. This final rule is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008, and the 1997 PM_{2.5} NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

DATES: *Effective Date:* This final rule is effective on May 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0139. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 2010 (75 FR 27512), EPA published a notice of proposed rulemaking (NPR) for the District. The NPR proposed approval of the District's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS. The formal submittals submitted by the District Department of the Environment on December 6, 2007 and January 11, 2008 addressed the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS; the submittals dated August 25, 2008 and September 22, 2008 addressed the section 110(a)(2) requirements for the 1997 PM_{2.5} NAAQS; and the submittal dated September 21, 2009 addressed the section 110(a)(2) requirements for the 2006 PM_{2.5} NAAQS.

II. Summary of Relevant Submissions

The above referenced submittals address the infrastructure elements specified in the CAA section 110(a)(2). These submittals refer to the implementation, maintenance and enforcement of the 1997 8-hour ozone, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. The rationale supporting EPA's proposed action is explained in the NPR and the technical support document (TSD) and will not be restated here. No public comments were received on the NPR. However, the portion of the TSD relating to section 110(a)(2)(D)(ii) is being revised because the TSD did not give the correct reason for the proposed approval. The TSD is available on line at <http://www.regulations.gov>, Docket number EPA-R03-OAR-2010-0139.

III. Final Action

EPA is approving the District's submittals that provide the basic program elements specified in CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 1997 8-hour ozone and

PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS.

EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 PM_{2.5} NAAQS. These findings pertained only to whether the submissions were complete, pursuant to section 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions. Each of these findings noted that the District failed to submit a complete SIP addressing the portions of (C) and (J) relating to the Part C permit programs for the 1997 8-hour ozone and the 1997 PM_{2.5} NAAQS.

The District has not submitted a permit program required under sections 110(a)(2)(C) and (J). Therefore, EPA is not approving the submissions with respect to sections 110(a)(2)(C) and (J) relating to the Part C permit programs for the 1997 8-hour ozone, the 1997 PM_{2.5} NAAQS or the 2006 PM_{2.5} NAAQS. However, these requirements with respect to the permit programs have already been addressed by a Federal Implementation Plan (FIP) that remains in place (see 40 CFR 52.499), and therefore this action will not trigger any additional FIP obligation with respect to this requirement.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a permit program in Part D Title I of the CAA; and (2) any submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of Part D Title I of the CAA. This action does not cover these specific elements. This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS, since they have been addressed by separate findings issued by EPA. See April 25, 2005 (70 FR 21147) and June 9, 2010 (75 FR 32673).

This notice does not take any action to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA

guidance (August 11, 1999 Steven Herman and Robert Perciasepe Guidance Memorandum, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown”) and EPA plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

This notice also does not take any action to approve or disapprove any existing state rules with regard to Director’s discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and EPA plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a Director’s discretion or variance provision which is contrary to the CAA to take steps to correct the deficiency as soon as possible.

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 Act 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);
- 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 defined 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 June 13, 2011. 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 pertaining to the District of Columbia’s section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and PM_{2.5} NAAQS, and the 2006 PM_{2.5} 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 1, 2011.

W.C. Early,

Acting Regional Administrator, EPA Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 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 entries at the end of the table for “Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS”, “Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS”, and “Section 110(a)(2) Infrastructure Requirements for the 2006 PM_{2.5} NAAQ” to read as follows:

§ 52.470 Identification of plan.

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	District of Columbia	12/06/07 1/11/08	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS.	District of Columbia	8/25/08 9/22/08	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS.	District of Columbia	9/21/09	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2006-0130-201111(a); FRL-9293-4]

Approval and Promulgation of Implementation Plans: Florida; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval of provisions in the Florida State Implementation Plan (SIP) to a full approval under the federal Clean Air Act (CAA or Act). On June 17, 2009, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a SIP revision in response to the conditional approval of its New Source Review (NSR) permitting program. The revision includes changes to certain parts of the Prevention of Significant Deterioration (PSD) construction permit program in Florida, including the definition of “new emissions unit,” “regulated air pollutant” and “significant emissions rate” as well as recordkeeping requirements. In addition, Florida provided a clarification that the significant emissions rate for mercury in the Florida regulations is intended to apply as a state-only provision. EPA has determined that this revision addresses the conditions identified in the conditional approval, and is therefore approvable. This action is being taken pursuant to section 110 of the CAA.

DATES: This direct final rule is effective June 13, 2011 without further notice, unless EPA receives adverse comment by May 12, 2011. 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-R04-OAR-2006-0130, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* adams.yolanda@epa.gov.
3. *Fax:* (404) 562-9019.
4. *Mail:* EPA-R04-OAR-2006-0130, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2006-0130.” EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.