



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2015-0455; FRL-9934-81-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Delaware; 2011 Base Year Inventories for the 2008 8-Hour Ozone National  
Ambient Air Quality Standard for New Castle and Sussex Counties**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve the 2011 base year inventories for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) for New Castle and Sussex Counties, submitted by the State of Delaware. The emission inventories were submitted to meet the nonattainment requirements for the marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventories for the 2008 8-hour ozone NAAQS for New Castle and Sussex Counties, Delaware, in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. 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 Number EPA-R03-OAR-2015-

0455 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0455, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2015-0455. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](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 information that you consider to be CBI, or otherwise protected, through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website 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 [www.regulations.gov](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.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Ground-level ozone is formed when nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects

occur following a person's exposure to ozone, particularly children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. As a consequence of this scientific evidence, EPA promulgated the 0.12 part per million (ppm) 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979).

On July 18, 1997 (62 FR 38855), EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). On May 21, 2012 (77 FR 30088), New Castle and Sussex Counties were designated as marginal nonattainment for the more stringent 2008 8-hour ozone NAAQS. New Castle County is part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. Sussex County is designated as the Seaford nonattainment area for the 2008 8-hour ozone NAAQS. Under section 172(c)(3) of the CAA, Delaware is required to submit comprehensive, accurate, and current inventories of actual emissions from all sources of the relevant pollutants in its marginal nonattainment areas, i.e., New Castle and Sussex Counties.

## **II. Summary of SIP Revision**

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, current accounting of actual emissions from all sources (point, nonpoint, nonroad, and onroad) in the nonattainment area. CAA section 182(a)(1) requires that areas designated as nonattainment and classified as marginal are to submit an inventory of all sources of ozone precursors no later than

2 years after the effective date of designation. This “base year” inventory contains actual annual emissions and typical ozone season day emissions for the ozone season of May through September for NOx, VOC, and carbon monoxide (CO).

On April 23, 2015, the Delaware Department of Natural Resources and Environment Control (DE DNREC) submitted its 2011 base year inventories for the 2008 8-hour ozone NAAQS for its marginal nonattainment areas of New Castle and Sussex Counties. The 2011 base year inventories include emissions estimates that cover the general source categories of stationary point sources, stationary nonpoint sources, nonroad mobile sources and onroad mobile sources. The pollutants that comprise the inventory are NOx, VOCs, and CO.

Tables 1 and 2 summarize the 2011 VOC, NOx and CO emission inventory by source sector for New Castle and Sussex Counties. Annual emissions are given in tons per year (tpy), and summer weekday emissions are given in tons per day (tpd).

**Table 1. New Castle County 2011 Emissions**

Source Sector	Annual (tpy)			Summer Weekday (tpd)		
	VOC	NOx	CO	VOC	NOx	CO
Point	819	2,750	3,649	2.97	12.02	12.32
Non-Point	4,882	1,324	3,425	11.39	2.11	2.24
Onroad	3,285	7,495	37,489	8.85	20.65	91.58
Nonroad	1,989	3,577	20,688	7.04	11.19	79.33
Total	10,975	15,146	65,251	30.25	45.97	185.47

**Table 2. Sussex County 2011 Emissions**

Source Sector	Annual (tpy)			Summer Weekday (tpd)		
	VOC	NOx	CO	VOC	NOx	CO
Point	815	2,456	442	4.94	12.10	1.60
Non-Point	2,177	478	2,463	5.95	0.86	2.05
Onroad	2,974	4,702	28,323	8.86	14.87	78.67

Nonroad	2,558	3,045	16,917	8.47	10.02	60.50
Total	8,524	10,681	48,145	28.22	37.85	142.82

EPA's guidance for emissions inventory development calls for actual emissions to be used in the base year inventory. DE DNREC developed the point source data for the 2011 base year inventory using emissions directly reported by the facilities. For the 2011 nonpoint source emissions, also known as "area sources," DE DNREC estimated emissions by multiplying an emission factor by some known indicator of collective activity for each source category by county. These emissions are typically calculated on an annual basis, because activity data are generally only available on an annual basis. DE DNREC converted the annual emissions to seasonal emissions.

DE DNREC has submitted data from EPA's National Emissions Inventory (NEI), version 1, for the onroad inventory. The NEI onroad emissions inventory was developed using the EPA's highway mobile source emissions model, MOVES 2010a. DE DNREC prepared the 2011 nonroad mobile source inventory using EPA's NONROAD2008a model, which estimates fuel consumption and emissions for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels. Aircraft emissions were estimated using the Federal Aviation Administration's (FAA) Emissions and Dispersion Modeling System (EDMS). Locomotive emissions were calculated using company provided fuel consumption data. Commercial marine vessel emissions were calculated using specific activity and operation data for each vessel. DE DNREC reported annual emissions and ozone season day emissions.

EPA reviewed DE DNREC's 2011 base year emission inventories for New Castle and Sussex Counties and determined that the results obtained and the procedures and methodologies used are acceptable and approvable. A detailed evaluation of Delaware's 2011 base year inventories is provided in the Technical Support Document (TSD) EPA prepared for this rulemaking action. The TSD can be found at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2015-0455.

### **III. Final Action**

Pursuant to section 172(c) of the CAA, EPA is approving the 2011 base year emissions inventories for New Castle and Sussex Counties submitted by the State of Delaware for the 2008 8-hour ozone NAAQS as revisions to the Delaware's SIP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### **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 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);
- 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action approving Delaware's 2011 base year inventories for the 2008 8-hour ozone NAAQS for New Castle and Sussex Counties 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 17, 2015.

Shawn M. Garvin,  
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 I--Delaware**

2. In §52.420, the table in paragraph (e) is amended by adding the entry “2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

**§52.420 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * * * *				
2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard	New Castle and Sussex Counties	April 23, 2015	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	§52.423(e).

3. Section 52.423 is amended by adding paragraph (e) to read as follows:

**§52.423 Base year emissions inventory.**

\* \* \* \* \*

(e) EPA approves as a revision to the Delaware State Implementation Plan the 2011 base year emissions inventory for New Castle and Sussex Counties for the 2008 8-hour ozone national ambient air quality standard submitted by the Delaware Department of the Natural Resources and Environmental Control on April 23, 2015. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), and carbon monoxide (CO).

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