



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0371; FRL-9995-06-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Administrative Corrections and Emissions Statements Certification for the 2008 Ozone National Ambient Air Quality Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions submitted by the District of Columbia (the District). Under the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas to report annual emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). The District formally submitted, as a SIP revision, a statement certifying that the District's existing SIP-approved emissions statements program satisfies these CAA requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Upon review of the District's submittal, EPA noted minor discrepancies between the District's SIP-approved provisions, including the provision containing the District's emissions statements requirements, and the current edition of the District of Columbia Municipal Regulations (DCMR) referenced in the District's submittal. Therefore, to correct these minor discrepancies and update the District's SIP, the District also formally submitted a revised edition of the sections of the DCMR which addresses the discrepancies. EPA is proposing to approve the District's SIP with the current edition of these SIP-approved provisions. EPA is also proposing to approve the District's

emissions statements program certification for the 2008 ozone NAAQS. EPA is proposing to approve these SIP revisions in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0371. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, 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) 814-2043. Ms. Calcinore can also be reached via electronic mail at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health

effects, EPA promulgated the first ozone NAAQS, the 0.12 parts per million (ppm) 1-hour ozone NAAQS, in 1979. See 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. See 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS. See 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington, DC-MD-VA area was designated as marginal nonattainment for the 2008 ozone NAAQS. The Washington, DC-MD-VA marginal nonattainment area includes the District of Columbia. 40 CFR 81.309.

Section 182 of the CAA identifies additional plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources emitting VOCs or NO<sub>x</sub>. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO<sub>x</sub> and VOC to the state. However, states may waive this reporting requirement for classes and categories of stationary sources that emit under 25 tons per year (tpy) of NO<sub>x</sub> and/or VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. See CAA

section 182(a)(3)(B)(ii).

On March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statements requirements of CAA section 182(a)(3)(B) (2015 final rule). 80 FR 12264. Per the preamble to EPA's 2015 final rule, the source emissions statement requirement applies to all areas designated nonattainment for the 2008 ozone NAAQS. See 80 FR 12264, 12291. The preamble to EPA's 2015 final rule also states that most areas that are required to have an emissions statement program for the 2008 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. *Id.* The preamble to EPA's 2015 final rule states that, "If an area has a previously approved emissions statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS." *Id.* In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval in the SIP to meet the requirements of CAA section 182(a)(3)(B). *Id.* In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statement rule. *Id.*

In summary, the District is required to submit, as a formal revision to its SIP, a statement certifying that the District's existing emissions statement program satisfies the requirements of CAA section 182(a)(3)(B) and covers the entirety of the District since it is included as part of the Washington, DC-MD-VA marginal nonattainment area for the 2008 ozone NAAQS.

## II. Summary of SIP Revision and EPA Analysis

On May 25, 2018, the District, through the District of Columbia Department of Energy and the Environment (DOEE), submitted, as a formal revision to its SIP, a statement certifying that the District's existing emissions statements program covers the District's portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). Upon review of the District's emissions statements certification, EPA noted minor, stylistic and numbering discrepancies between the District's SIP-approved emissions statements provisions and the emissions statements provisions in the current publication of 20 DCMR § 500 that are cited in the District's emissions statements certification.

EPA first approved the District's emissions statements requirements found at 20 DCMR 500.7 into the District's SIP on May 26, 1995 (60 FR 27944).<sup>1</sup> 40 CFR 52.470. However, in their emissions statements certification for the 2008 ozone NAAQS, the District cites 20 DCMR 500.9 as containing their emissions statements requirements. According to DOEE, pursuant to the District of Columbia Documents Act of 1978 (D.C. Official Code section 2-611 *et seq.*) and Title III of the District of Columbia Administrative Procedures Act (APA) (D.C. Official Code section 2-551 *et seq.*), the Council granted the Administrator of the Office of Documents and Administrative Issuances (ODAI) editorial control of the DCMR to make minor changes in order to conform to their style guide without going through any official legal rulemaking process. Under this authority, it appears that the Administrator of ODAI made numbering and minor stylistic changes to several provisions under 20 DCMR 500, which resulted in the renumbering of the District's emissions statements provisions from 20 DCMR 500.7 to 20 DCMR 500.9.

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<sup>1</sup> 20 DCMR 500.4 – 500.5 and 500.6 were also approved into the District's SIP on January 26, 1995 (60 FR 5134) and October 27, 1999 (64 FR 57777), respectively. These provisions concern reporting requirements related to the transfer of gasoline products.

Therefore, on December 12, 2018, the District, through DOEE, submitted a SIP revision requesting that the District's SIP be updated to reflect these minor administrative changes, including the renumbering of the District's SIP-approved emissions statements provision from 20 DCMR 500.7 to 20 DCMR § 500.9. This SIP revision requests that EPA update the District's SIP to reflect the current citations to 20 DCMR 500.4 – 500.9, rather than the now outdated citations to 20 DCMR 500.4 – 500.5, 500.6, and 500.7. The SIP revision also requests several minor stylistic changes to these SIP-approved provisions, including, but not limited to, the use of “§” as opposed to “section” and the addition of semicolons.

On March 5, 2019 (84 FR 7858), EPA published a notice of proposed rulemaking (NPRM) for the District. In the NPRM, EPA found the District's December 12, 2018 administrative changes approvable under CAA section 110(a) and the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS approvable under CAA section 182(a)(3)(B). EPA proposed to approve both as revisions to the District SIP. EPA received a public comment on the March 5, 2019 NPRM. The submitted comment was not specific to this action and thus is not addressed here.

In this rulemaking action, EPA is approving the District's December 12, 2018 request to revise their SIP to reflect the current edition of the DCMR for the SIP-approved provisions under 20 DCMR 500.4 – 500.9. EPA is also approving the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS and is finding that the District satisfies the emissions statements requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. The rationale for EPA's proposed approval of the District's SIP revision requesting administrative changes to the SIP-approved provisions under 20 DCMR 500.4 – 500.9 and the District's

emissions statements certification for the 2008 ozone NAAQS is included in the NPRM and will not be restated here.

### **III. Final Action**

EPA is approving, as a revision to the District's SIP, the District's December 12, 2018 request to revise their SIP to reflect the current provisions under 20 DCMR 500.4 – 500.9. EPA is also approving, as a revision to the District's SIP, the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the provisions under 20 DCMR 500.4 – 500.9. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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). 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 in the next update to the SIP compilation.<sup>2</sup>

### **V. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

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 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 (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. This action revising the District's SIP to reflect the current provisions under 20 DCMR §§ 500.4 – 500.9 and approving the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS as satisfying the requirements of CAA section 182(a)(3)(B) for the 2008 ozone 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 30, 2019.

Cosmo Servidio,  
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. Amend § 52.470:

a. In the table in paragraph (c) by:

i. Revising entries for “Sections 500.4, 500.5”, “Section 500.6”, and “Section 500.7”;

and

ii. Adding entries in numerical order for “Section 500.8” and “Section 500.9”; and

b. In the table in paragraph (e) by adding the entry “Emissions Statements Rule Certification for the 2008 Ozone NAAQS” at the end of the table.

The revisions and additions read as follows:

**§ 52.470 Identification of plan.**

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(c) \* \* \*

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

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
<b>District of Columbia Municipal Regulations (DCMR), Title 20—Environment</b>				
*	*	*	*	*
<b>Chapter 5 Source Monitoring and Testing</b>				
*	*	**	*	**
Sections 500.4, 500.5	Records and Reports	09/30/93	<b><u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u></b>	Approved into the SIP on January 26, 1995.  Administrative updates.
Section 500.6	Records and Reports	09/30/93	<b><u>[Insert date of publication in the Federal Register, Insert</u></b>	Approved into the SIP on January 26, 1995.  Administrative updates.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>Federal Register citation]</u>	
Section 500.7	Records and Reports	09/30/93	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Approved into the SIP on January 26, 1995.  Administrative updates.
Section 500.8	Records and Reports	09/03/93	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Approved into the SIP on October 27, 1999.  Administrative updates.
Section 500.9	Records and Reports – Emissions Statements	9/30/93	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Approved into the SIP on May 26, 1995.  Administrative updates.
*	*	*	*	*

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(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	* *	*	
Emissions Statements Rule Certification for the 2008 Ozone NAAQS.	District of Columbia portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS (i.e. the District of Columbia).	05/25/18	<b><u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u></b>	Certification that the District's SIP-approved regulations at 20 DCMR § 500.9 meet the emissions statements requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS.

[FR Doc. 2019-12294 Filed: 6/11/2019 8:45 am; Publication Date: 6/12/2019]