



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0754; FRL-9995-97-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Nonattainment New Source Review Requirements for 2008 8-Hour
Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia (the District). The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. This action is being taken under the Clean Air Act (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-2018-0754. 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: Ms. Amy Johansen, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 2019 (84 FR 9995), EPA published a notice of proposed rulemaking (NPRM) for the District. In the NPRM, EPA proposed approval of the District’s NNSR Certification for the 2008 8-hour ozone NAAQS. The formal SIP revision was submitted by the District on May 23, 2018. This SIP revision was in response to EPA’s final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. See 82 FR 9158 (February 3, 2017). Specifically, the District certified that its existing NNSR program, covering the District portion of the Washington, DC-MD-VA Nonattainment Area (Washington Area) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule), for ozone and its precursors.^{1,2}

¹ The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

² On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court or Court) issued an opinion on the EPA’s SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882

See 80 FR 12264 (March 6, 2015).

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Washington Area was classified as marginal nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. See 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. See 40 CFR 51.1103. The Washington Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, the area did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. See 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule

F.3d 1138, 2018 U.S. App.LEXIS 3636 (D.C. Cir. February 16, 2018). The D.C. Cir. Court found certain provisions from the SIP Requirements Rule to be inconsistent with the statute or unreasonable and vacated those provisions. *Id.* The Court found other parts of the SIP Requirements Rule reasonable and denied the petition for appeal on those provisions. *Id.*

extending the Washington Area 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016. Id.³

Based on initial nonattainment designations for the 2008 8-hour ozone NAAQS, as well as the March 6, 2015 final SIP Requirements Rule, the District was required to develop a SIP revision addressing certain CAA requirements for the Washington Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July 20, 2015).⁴ See 80 FR 12264 (March 6, 2015). EPA is approving the District's May 23, 2018 NNSR Certification SIP revision for the 2008 8-hour ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to the District's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160 through 165.

The District's SIP approved NNSR program, established in Chapters 1 (*Air Quality-General Rules*) and 2 (*Air Quality – General and Nonattainment Area Permits*) in Title 20 of the District of Columbia Municipal Regulations (DCMR), apply to the construction and modification of major stationary sources in nonattainment areas. In its May 23, 2018 SIP revision, the District

³ EPA approved a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Washington Area. This action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013-2015 monitoring period. See 82 FR 52651 (November 14, 2017). It should be noted that a DOA does not alleviate the need for the District to certify that its existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment.

⁴ Neither the District's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*.

certified that the versions of 20 DCMR Chapters 1 and 2 approved in the SIP are at least as stringent as the Federal NNSR requirements for the Washington Area.

In addition, on February 3, 2017, EPA found that 15 states and the District failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, *inter alia*, that the District failed to submit SIP revisions in a timely manner to satisfy NNSR requirements for the Washington Area. The District submitted its May 23, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160 through 165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit was discussed in the NPRM and will not be restated here.

III. Public Comments and EPA Response

EPA received one set of relevant comments on the March 19, 2019 NPRM. A summary of the comments and EPA's responses are discussed in this Section. A copy of the comments can be found in the docket for this rulemaking action.

Comment: The commenter affirms that under the CAA the EPA sets NAAQS for six criteria pollutants and after each NAAQS is set, states throughout the United States are required to develop reduction strategies, plans, and programs in order to attain those NAAQS. Further, the commenter notes that in 2008 EPA revised the 8-hour ozone NAAQS to 0.075 parts per million, which is attained when the three-year average of the annual fourth-highest daily maximum average is less than 0.075 ppm. The commenter asserts there is evidence to show that there is a relationship between ozone exposure and a number of lung and heart related diseases in children and adults, which in some cases increases visits to the Emergency Department (ED). Lastly, the commenter notes that ozone impacts human health and, if EPA approves the District's SIP, it is going against EPA's missions to protect human and environmental health.

EPA Response: While not the subject of this rulemaking action, EPA thanks the commenter for their comments and agrees with the commenter's assertions, as it relates to setting the NAAQS and the impacts ozone can have on our health and the environment. In order to protect human health and welfare, the CAA requires EPA to establish NAAQS for certain common and widespread pollutants based on the latest science. Sections 108 and 109 of the CAA govern the establishment, review and revision, as appropriate, of the NAAQS for each of the six common criteria air pollutants: ground-level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide. The CAA requires periodic review of the science upon which the standards are based and the standards themselves.

EPA concurs that ozone pollution can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Which may in turn, increase emergency room visits and days absent from school and work. Specific to the

2008 8-hour ozone NAAQS, EPA looked at many epidemiological studies to determine ozone's effect on the population.⁵

Upon EPA's comprehensive review of the ozone NAAQS, the 2008 8-hour ozone standard in this instance, EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards. See 73 FR 16436 (March 27, 2008). In that action, the EPA promulgated identical revised primary (health-based) and secondary (welfare-based) ozone standards, designed to protect public health and welfare, of 0.075 parts per million (ppm).⁶ Those standards are met when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm. See 40 CFR 50.15.

As discussed in the NPRM, promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards; for ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation. See CAA sections 107(d)(1) and 181(a)(1). Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent three years). The possible classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme. See CAA section 181(a)(1). Nonattainment areas with a "lower" classification have ozone levels that are closer to the standard than areas with a "higher" classification.⁷

On May 21, 2012 and June 11, 2012, the EPA issued rules designating 46 areas throughout the

⁵ For more specifics on EPA's review of the health effects considered, see: U.S. Environmental Protection Agency, March 2008. Final Ozone NAAQS Regulatory Impact Analysis. EPA-452/R-08-003. https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-o3_ria_final_2008-03.pdf.

⁶ Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as "the 2008 ozone NAAQS" or "the 2008 ozone standard."

⁷ See 40 CFR 51.1103 for the design value thresholds for each classification for the 2008 ozone NAAQS.

country as nonattainment for the 2008 ozone NAAQS, effective July 20, 2012, and establishing classifications for the designated nonattainment areas.⁸ As noted previously, the Washington Area was designated as marginal for the 2008 8-hour ozone standard. Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. States in the OTR are additionally subject to the requirements outlined in CAA section 184. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a marginal area, a state is required to submit a baseline emissions inventory and adopt a SIP requiring emissions statements from stationary sources and implementing a NNSR program for the relevant ozone standard. See CAA section 182(a). For a moderate area, a state needs to comply with the marginal area requirements, plus additional requirements, including the requirement to submit a demonstration that the area will attain in six years, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program. For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.⁹ Upon promulgation of the 2008 ozone NAAQS, states in the OTR were required to submit a SIP revision for RACT. See 40 CFR 51.1116. As noted in the March 19, 2019 NPRM, this requirement is the only recurring

⁸ 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012).

⁹ CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS. In that case, the nonattainment requirements described above also apply to those portions of that state.

On March 6, 2015, the EPA established a final implementation rule for the 2008 ozone SIP Requirements Rule. See 80 FR 12264. The purpose of that action was to detail the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provide specific deadlines for SIP submittals.

EPA agrees with the commenter and has taken the appropriate steps to promulgate ozone NAAQS that are protective of human health and the environment, in addition to providing ozone nonattainment areas with their specific statutory obligations under the CAA. EPA disagrees with the commenter's assertion that by approving the District's 2008 8-hour ozone SIP revision certifying that its NNSR program is adequate, EPA is somehow going against its mission to protect human health and the environment. To the contrary, EPA has determined that the District is meeting their statutory obligations relating to NNSR permitting as needed to work towards attaining and maintaining the 2008 8-hour ozone NAAQS, as required by the CAA and the final SIP Requirements Rule.

Comment: The commenter states that in 2012, the Washington Area was in nonattainment and, subsequently in 2015 EPA issued a rule requiring state, local, and tribal air quality management agencies to create plans and programs to reduce ozone pollution. The commenter notes that the Washington Area modified its SIP and that EPA should not approve the District's SIP (EPA assumes the commenter is referring to a revision to the District's SIP).

EPA Response: EPA agrees with the commenter's first point and notes that, as stated in the NPRM, the Washington Area was classified as marginal nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. See 77 FR 30088.

As it relates to the commenter's second point, in EPA's March 19, 2019 NPRM and in the previous response to comment, EPA thoroughly discussed specific SIP requirements for the 2008 ozone NAAQS as set forth in the March 6, 2015 final SIP Requirements Rule and those specific requirements will not be restated here. See 84 FR 9995.

Lastly, it is unclear to EPA what SIP revision (or plan revision) the commenter is referring to and, therefore, EPA cannot offer a specific response, except to reaffirm that per the subject of this rulemaking action, EPA is finalizing its determination that the District's existing NNSR program for the 2008 8-hour ozone NAAQS is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final SIP Requirements Rule, for ozone and its precursors. See 80 FR 12264 (March 6, 2015).

Comment: The commenter emphasized that the District's SIP states that because the District is in the OTR, they do not need to meet the NAAQS requirements. The commenter then notes that because they are in the OTR, they are only required to meet the threshold under the Federal OTR requirements.

EPA Response: EPA believes the commenter misunderstood the statement being made in the District's May 23, 2018 SIP revision. In EPA's March 19, 2019 NPRM, there was a thorough discussion related to applicable OTR requirements and those specifics will not be restated here,

except to note that the entire District is currently designated as nonattainment for the 2008 8-hour ozone NAAQS. See “Summary of SIP Revision and EPA Analysis” in 84 FR 9995. Therefore, OTR emissions threshold requirements would not apply, but NNSR emissions thresholds (and all other NNSR requirements) continue to apply. See 40 CFR 51.165(a)(1)(iv)(A)(1). If EPA redesignates the Washington Area to attainment for the 2008 8-hour ozone NAAQS, at that time NNSR would no longer apply, but the Federal prevention of significant deterioration (PSD) and Federal OTR requirements (i.e., emissions thresholds and other applicable requirements) would apply to major sources in the District.

Comment: The commenter asserts that despite the District never being classified as extreme nonattainment for ozone, the District should do a full review of their regulations.

EPA Response: EPA agrees with the commenter’s first point and the District’s own assertion in its May 23, 2018 SIP revision. The District has never been classified as extreme nonattainment for an ozone NAAQS. Regarding the statement that the District should do a full review of its regulations, that comment is outside the scope of this action. This specific rulemaking action is focused on NNSR requirements that apply to the nonattainment area and the District’s SIP approved NNSR program, established in Chapters 1 (*Air Quality-General Rules*) and 2 (*Air Quality – General and Nonattainment Area Permits*) in Title 20 of the District of Columbia Municipal Regulations (DCMR). The District evaluated the necessary regulations for this rulemaking action and certified in its May 23, 2018 SIP revision that its existing Federally-approved NNSR program is at least as stringent as the Federal NNSR requirements found at 40 CFR 51.165, and based on EPA’s analysis of that SIP revision, EPA agrees with the District and is moving forward to approve this rulemaking action.

Comment: The commenter makes a claim that in 2017, the Director of the District's Department of Energy and Environment (DOEE) claimed to be close to achieving the NAAQS standard for ozone, which has yet to happen.

EPA Response: While EPA cannot speak to specific statements made by the Director of DOEE, nor are those alleged statements the subject of this rulemaking action, EPA can identify its approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Washington Area. That action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013-2015 monitoring period. See 82 FR 52651 (November 14, 2017). It should be noted that a DOA does not alleviate the need for the District to certify that its existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment.

In addition, on March 12, 2018, the District submitted to EPA for its approval, a redesignation request and maintenance plan for the 2008 8-hour ozone NAAQS. EPA has already acted on the District's maintenance plan portion of that March 12, 2018 SIP submittal and proposed approval of the District's redesignation request on May 21, 2019. See 84 FR 15108 (April 15, 2019) and 84 FR 22996, respectively.

Comment: The commenter makes a statement that the District has not submitted a SIP which includes regional planning, an emissions inventory, sources of haze-causing pollutants and a long-term strategy since 2010 and that this report should be updated, because the District is still in nonattainment for ozone. The commenter further asserts that EPA should not approve the District's SIP, because the District is not in attainment for ozone. The commenter believes that the District should be required to submit a full revision of its 2010 SIP and include an emissions

inventory and a long-term strategy at the very least.

EPA Response: It is unclear what “full revision of the 2010 SIP” the commenter is referencing, but to the extent the commenter is referring to a previously approved DOA and Clean Data Determination (CDD) for the 1997 8-hour Moderate Ozone Nonattainment Area, it is not the subject of this rulemaking action. See 77 FR 11739 (February 28, 2012). EPA received the District’s SIP revision for that rulemaking action on June 15, 2010 and finalized the rulemaking in 2012.¹⁰

The commenter also suggests that the District should be required to submit a full revision of its 2010 SIP, with an emissions inventory and long-term strategy at the very least. This comment is not germane to this rulemaking action, which is focused on the District’s NNSR program. The applicable CAA requirements for the District were clearly articulated in the March 19, 2019 NPRM for this action and will not be restated here.

Finally, EPA disagrees with the commenter’s statement that because the District is still in nonattainment, this SIP revision should not be approved. This SIP revision addressing NNSR requirements was submitted because the District was designated nonattainment for the 2008 8-hour ozone NAAQS. The SIP revision is an applicable requirement under the CAA for nonattainment areas and the District’s SIP meets the applicable CAA standards; therefore, EPA is approving the SIP revision as required under CAA section 110(k)(3).

IV. Final Action

¹⁰ The commenter makes a statement with respect to “haze-causing pollutants” and while not the subject of this rulemaking, EPA wants to confirm that the District has met and continues to meet their statutory obligations found at 40 CFR 51.308, as it relates to regional haze. The latest regional haze approvals for the District are as follows: Regional Haze Five-Year Progress Report, See 82 FR 37305 (August 10, 2017) and Regional Haze SIP (1st Planning Period), See 77 FR 5191 (February 2, 2012).

EPA is approving the District's May 23, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Washington Area. EPA has concluded that the District's submission fulfills the 40 CFR 51.1114 revisions requirement, meets the requirements of CAA section 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. See 82 FR 9158.

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 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 pertaining to the District’s NNSR program and the 2008 8-hour 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: June 21, 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. In § 52.470, the table in paragraph (e) is amended by adding the entry “2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)” at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	*	
2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)	The District of Columbia	05/23/2018	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	

[FR Doc. 2019-14144 Filed: 7/3/2019 8:45 am; Publication Date: 7/5/2019]