



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0489; FRL10018-20-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

District of Columbia; Nonattainment New Source Review Requirements for 2015 8-Hour

Ozone 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 submitted by the Department of Energy and Environment (DOEE) of the District of Columbia. This SIP revision will fulfill the District of Columbia's Nonattainment New Source Review (NNSR) SIP element requirement for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0489 at <https://www.regulations.gov>, or via email to Opila.MaryCate@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: Matthew Willson, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5795. Mr. Willson can also be reached via electronic mail at Willson.Matthew@epa.gov.

SUPPLEMENTARY INFORMATION: On May 5, 2020, the DOEE submitted on behalf of the District of Columbia (District) a formal SIP revision, requesting EPA's approval of its NNSR Certification for the 2015 8-hour ozone NAAQS. The District is certifying that its existing NNSR program, covering the District portion of the Washington, DC-MD-VA Nonattainment Area (Washington Area) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 Code of Federal Regulations (CFR) 51.165, as amended by the final rule titled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

I. Background

On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR 50.19, the 2015 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 0.070 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 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014-2016 ambient air quality data. 83 FR 25776. On December 6, 2018, 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 2015 8-hour ozone NAAQS. 80 FR 65291, October 26, 2015. Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021. 40 CFR 51.1303 and 83 FR 10376, March 9, 2018.

Based on initial nonattainment designations for the 2015 8-hour ozone NAAQS, as well as the December 6, 2018 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 2015 8-hour ozone NAAQS (i.e., August 3, 2021). See 83 FR 62998 (December 6, 2018). EPA is proposing to approve the District's May 5, 2020 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 8-hour ozone NAAQS is provided in Section II of this document below.

II. Summary of SIP Revision and EPA Analysis

This rulemaking 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 ozone NAAQS are located in 40 CFR 51.160 through 51.165.

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are set forth in 40 CFR 51.165. These NNSR program requirements include

those promulgated in the “Phase 2 Rule” implementing the 1997 8-hour ozone NAAQS (70 FR 71611 (November 29, 2005)), the 2008 Ozone NAAQS SIP implementation Rule (80 FR 12264, March 6, 2015) and the 2015 SIP Requirements Rule (83 FR 62998, December 6, 2018). Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for oxides of nitrogen (NO_x) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(I)(i)-(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(I)-(2); provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9).

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 certifies 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. EPA last approved revisions to the District’s major NNSR SIP on March 19, 2015. In that action, EPA approved revisions to the District’s SIP which made DOEE’s NNSR program consistent with Federal requirements. 80 FR 14310, March 19, 2015 .

Title 20 DCMR section 199 and the District’s SIP adequately addresses 40 CFR

51.165(a)(1)(iv)(A)(I), because the definition of “major stationary source” in 20 DCMR section 199 includes a threshold of 25 tons per year or more of NO_x or VOC in any nonattainment area for ozone, which is equivalent to the NNSR thresholds for severe ozone nonattainment areas. Although the Washington Area is classified as a marginal nonattainment area for the 2015 8-hour ozone NAAQS, due to anti-backsliding provisions set forth in 40 CFR 51.905 and its prior classification as a severe area under the 1979 1-hour ozone NAAQS, the Washington Area retains the severe area thresholds for the purposes of NNSR.

The District has chosen not to include certain optional NNSR provisions that EPA could approve, pertaining to emissions reduction credits, inter-pollutant trading programs and Prevention of Significant Deterioration. The District’s choice not to include these provisions does not affect EPA’s determination regarding the approvability of its May 5, 2020 submittal, and they will not be discussed in this rulemaking.

III. Proposed Action

EPA’s review of this material indicates that the District’s submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. EPA is proposing to approve the District of Columbia’s SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Washington Area, which was submitted on May 5, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final 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 it is not a significant regulatory action 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 proposed rulemaking, approving the District's 20015 8-hour ozone NAAQS Certification SIP revision for NNSR, 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, Nitrogen dioxide, Ozone, Particulate Matter, Transportation, Volatile organic compounds.

Dated: February 3, 2021

Diana Esher,
Acting Regional Administrator,
Region III.