



40 CFR Part 52

[EPA-R03-OAR-2020-0574; FRL10020-86-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

District of Columbia; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality 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 formally submitted by the District of Columbia Department of Energy and the Environment (DOEE). Under the Clean Air Act (CAA), a state's SIP must include an emission statement regulation that requires stationary sources in ozone nonattainment areas classified as marginal or above to report annual emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC). This SIP revision provides the District's certification that its existing emissions statement program satisfies the emissions statement requirements of the CAA for the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the District's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the 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-2020-0574 at <https://www.regulations.gov>, or via email to Gordon.Mike@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: Serena Nichols, 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) 814-2053. Ms. Nichols can also be reached via electronic mail at Nichols.Serena@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 part 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. 62 FR 38856. 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. See 73 FR 16436 (March 27, 2008). In 2015, EPA further lowered the 8-hour ozone NAAQS from 0.075 ppm to 0.070

ppm. The 0.070 ppm standard is referred to as the 2015 ozone NAAQS. See 80 FR 65452 (October 26, 2015).

On June 4, 2018 and July 25, 2018, EPA designated nonattainment areas for the 2015 ozone NAAQS. 83 FR 25776 and 83 FR 35136. Effective August 3, 2018 (83 FR 25776, June 4, 2018), the Washington, DC-MD-VA area was designated as marginal nonattainment for the 2015 ozone NAAQS. See 40 CFR 81.309. Section 182 of the CAA identifies plan submissions and requirements for ozone nonattainment areas. Specifically, CAA section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual emission reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO_x and VOC to the state. However, states may waive this requirement for sources that emit under 25 tons per year (tpy) of NO_x or VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. See CAA section 182(a)(3)(B)(ii).

EPA published guidance on source emissions statements in a July 1992 memorandum titled, “Guidance on the Implementation of an Emission Statement Program”¹ and in a March 14, 2006 memorandum titled, “Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation” (2006 memorandum).² In addition, on December 6, 2018, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including the emission statement requirements of CAA section 182(a)(3)(B) (2018 final rule). 83 FR 62998, codified at 40 CFR part 51, subpart CC. The 2006 memorandum clarified that the emissions statement requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Per EPA’s 2018 final rule, the emissions statement

¹ July 1992 memorandum titled, “Guidance on the Implementation of an Emission Statement Program” is available online at https://www.epa.gov/sites/production/files/2015-09/documents/emission_statement_program_zypdf.pdf Docket ID: EPA-R03-QAR-2020-0574.

² March 14, 2006 memorandum titled, “Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation” is available online at https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone_031406.pdf, Docket ID: EPA-R03-OAR-2020-0574.

requirement also applies to all areas designated nonattainment for the 2015 ozone NAAQS. 83 FR 62998, 63023 (December 6, 2018).

According to the preamble to EPA's 2018 final rule, most areas that are required to have an emissions statement program for the 2015 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 83 FR 62998, 63001(December 6, 2018). EPA's 2018 final rule states that, "Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS." *Id.* In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2015 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval into the SIP to meet the requirements of CAA section 182(a)(3)(B). 83 FR 62998, 63002 (December 6, 2018). 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 can 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 District's portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS.

As additional background, on July 12, 2019, EPA approved a revision to the District's SIP which corrected the citation to the District of Columbia Municipal Regulations (DCMR) where the requirement for stationary sources to submit emissions statements for NO_x and VOC are found. 84 FR 27202 (June 12, 2019). The District's emission statement regulation is currently found at 20 DCMR section 500.9.

II. Summary of SIP Revision and EPA Analysis

On June 4, 2020, the District, through DOEE, submitted as a formal SIP revision, a

statement certifying that the District's existing SIP-approved emissions statement program covers the District's portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). In its submittal, the District states that 20 DCMR section 500.9 contains emissions reporting requirements consistent with CAA section 182(a)(3)(B)(i), and that 20 DCMR section 500.9 is approved into the District's SIP. See 40 CFR 52.2420(c). EPA first approved the District's emissions statements requirements, now found at 20 DCMR section 500.9, into the District's SIP on May 26, 1995 (60 FR 27944).³ See also 40 CFR 52.470.

EPA's review of the District's submittal finds that the District's existing, SIP-approved emissions statement program at 20 DCMR section 500.9 satisfies the emission statement requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. The District's regulation requires the owner of any stationary source located in the District that emits 25 tpy or more of VOC or NO_x to submit an emissions statement to the Mayor by April 15 of each year for the emissions discharged during the previous calendar year. Emissions statements are required to be prepared and submitted in accordance with 20 DCMR section 500.9.

These emissions statements are required to be submitted annually for the previous calendar year and, at a minimum, must contain the following: (1) certification that the information in the statement is accurate to the best knowledge of the individual certifying the statement as well as the certifying individual's name and contact information; (2) source identification information including name, physical location, mailing address of the facility, latitude and longitude, and standard industrial classification code(s); (3) operating information including percentage annual throughput by season, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year during the normal operating schedule; (4) process rate data including annual process rate and peak ozone

³ 20 DCMR sections 500.4 through 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.

season daily process rate; (5) control equipment information; and (6) emissions information including, but not limited to, estimated actual emissions of NO_x and VOC in tpy and pounds per typical ozone season day. These reporting requirements in 20 DCMR section 500.9 meet the requirements of CAA section 182(a)(3)(B)(i).

As allowed by CAA section 182(a)(3)(B)(ii), the District has waived the emissions reporting requirement for stationary sources emitting less than 25 tpy of NO_x or VOCs because the District includes these emissions in reports to EPA. CAA section 182(a)(3)(B)(ii) allows the State to waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of VOC or NO_x if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

As noted in the District's June 4, 2020 submittal, pursuant to the Air Emissions Reporting Requirements rule at 40 CFR part 51, the District is required to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS), and that sources emitting less than 25 tpy of NO_x or VOC are included in these inventories as area sources. The submission also notes that emissions from these sources are calculated using emission factors approved by the Administrator. These small stationary sources are therefore addressed in accordance with CAA section 182(a)(3)(B)(ii).

Therefore, EPA has determined that the District's existing emissions statement program, as set forth at 20 DCMR section 500.9, which is currently in the District's SIP, and the District's reporting for sources emitting less than 25 tpy of NO_x or VOC, meet the emissions statement requirements in CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. EPA is proposing to approve, as a SIP revision, the District's June 4, 2020 emissions statement program certification as meeting the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

III. Proposed Action

EPA is proposing to approve the District's SIP revision submitted on June 4, 2020, which certifies that District's existing SIP-approved emissions statement program under 20 DCMR section 500.9 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. 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 EPA 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 (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 proposed rulemaking, in which EPA is proposing approval of the District's certification that its existing emission statement program satisfies the emission statement requirements of the CAA for the 2015 ozone NAAQS, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 3, 2021.

Diana Esher,
Acting Regional Administrator,
Region III.