



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2014-0759; FRL-9927-70-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington DC-MD-VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard**

**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 emissions inventories submitted by the District of Columbia, State of Maryland, and Commonwealth of Virginia (collectively, the States) for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The emissions inventories were submitted to meet nonattainment requirements related to the Washington, DC-MD-VA nonattainment area (the DC Area or Area) for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS for the DC Area in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after 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-2014-0759 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-2014-0759, 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-2014-0759. 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 submittals are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

## II. Summary of SIP Revision

## III. Final Action

## IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

## V. Statutory and Executive Order Reviews

### **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 National Ambient Air Quality Standard. *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. On April 30, 2004 (69 FR 23858), EPA designated areas as attaining or not attaining the 1997 8-hour ozone NAAQS and classified the DC Area as a moderate nonattainment area with an applicable attainment date of June 15, 2010. EPA approved the States' submittals pertaining to reasonable further progress (RFP), RFP

contingency measures, and Reasonably Available Control Measures (RACM), along with the Washington Area's 2002 base year inventory and 2008 transportation conformity motor vehicle emissions budgets (MVEBs) on September 20, 2011 (76 FR 58116). On February 28, 2012 (77 FR 11739), EPA determined that the DC Area had attained by its applicable attainment date.

Subsequently, 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), the DC Area was designated marginal for the more stringent 8-hour ozone standard. As a marginal nonattainment area, the DC Area is required under section 172(c)(3) of the CAA to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the Area.

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

On July 17, 2014, the District of Columbia Department of the Environment (DDOE) and the Virginia Department of Environmental Quality (VADEQ) submitted their 2011 base year inventories, and on August 4, 2014, the Maryland Department of the Environment (MDE) submitted its base year inventory. 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 NO<sub>x</sub> and VOCs.

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source

categories (i.e., point, nonpoint, nonroad mobile, and on-road mobile). The States developed the point source emissions inventory using actual emissions directly reported by electric generating unit (EGU) and non-EGU sources in the Area. For nonpoint source emissions, emissions were estimated by multiplying an emission factor by a known indicator of activity for each source category in the county (or county-equivalent). Nonroad mobile source emissions were determined using the EPA's NONROAD2008 model. Onroad mobile source emissions were developed using the EPA's highway mobile source emissions model MOVES 2010a. More information regarding the review of the base year inventory can be found in the technical support document (TSD) that is located in the docket for this rulemaking action.

### **III. Final Action**

Pursuant to section 172(c) of the CAA, EPA is approving the 2011 base year emissions inventories submitted by the District of Columbia, Maryland, and Virginia for the 2008 8-hour ozone NAAQS as revisions to the States' respective SIPs. 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 revisions if adverse comments are filed. This rule will be effective on **[insert date 60 days from date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days from 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. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since

Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.” Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## **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 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 from date of publication of this document 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 this 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 the 2011 emissions inventories for the states that comprise the Washington, DC Nonattainment Area 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 4, 2015.

William C. Early, Acting  
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 an entry 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
* * * *	* * *			
2011 Base Year Emissions Inventory for the 2008 8-hour ozone standard	District of Columbia portion of the Washington, DC-MD-VA 2008 ozone nonattainment area	7/17/14	[Insert Federal Register publication date] [Insert Federal Register citation]	§ 52.474(f)

3. Section 52.474 is amended by adding paragraph (f) to read as follows:

**§ 52.474 Base Year Emissions Inventory.**

\* \* \* \*

(f) EPA approves as a revision to the District of Columbia State Implementation Plan the 2011

base year emissions inventory for the District of Columbia portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the District Department of the Environment on July 17, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

### **Subpart V--Maryland**

4. In § 52.1070, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

#### **§ 52.1070 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 Emissions Inventory for the 2008 8-hour Ozone standard	Maryland portion of the Washington, DC-MD-VA 2008 ozone nonattainment area	8/4/14	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register citation]</u>	§ 52.1075(o)

5. Section 52.1075 is amended by adding paragraph (o) to read as follows:

#### **§ 52.1075 Base year emissions inventory.**

\* \* \* \* \*

(o) EPA approves as a revision to the Maryland State Implementation Plan the 2011 base year emissions inventory for the Maryland portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the Maryland Department of Environment on August 4, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

#### **Subpart VV--Virginia**

6. In § 52.2420, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

#### **§ 52.2420 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 Emissions Inventory for the 2008 8-hour ozone standard	Virginia portion of the Washington, DC-MD-VA 2008 ozone nonattainment area	7/17/14	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register citation]</u>	§ 52.2425(g)

7. Section 52.2425 is amended by adding paragraph (g) to read as follows:

**§ 52.2425 Base Year Emissions Inventory.**

\* \* \* \* \*

(g) EPA approves as a revision to the Virginia State Implementation Plan the 2011 base year emissions inventory for the Virginia portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the Virginia Department of Environmental Quality on July 17, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).

[FR Doc. 2015-11562 Filed: 5/12/2015 08:45 am; Publication Date: 5/13/2015]