

York. 6 NYCRR Part 243, "Transport Rule NO<sub>x</sub> Ozone Season Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program." 6 NYCRR Part 244, "Transport Rule NO<sub>x</sub> Annual Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 244, "CSAPR NO<sub>x</sub> Annual Trading Program." 6 NYCRR Part 245, "Transport Rule SO<sub>2</sub> Group 1 Trading Program," has also been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 245, "CSAPR SO<sub>2</sub> Group 1 Trading Program." Attendant revisions were made to 6 NYCRR Part 200, "General Provisions," to update the list of referenced materials at Subpart 200.9 that are cited in the amended New York regulations.

The EPA is proposing to approve into the New York SIP the revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 submission.

The EPA is also proposing to repeal from the SIP previous versions of 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 which implemented New York's discontinued CAIR program. New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced CAIR trading program rules with CSAPR trading rules on November 10, 2015. Subsequently, on November 11, 2018, New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced the November 15, 2015 adopted rules that implemented New York's CSAPR program with new versions of New York's CSAPR trading program rules. The rules that are proposed to be repealed from the SIP are 6 NYCRR Part 243, "CAIR NO<sub>x</sub> Ozone Season Trading Program," 6 NYCRR Part 244, "CAIR NO<sub>x</sub> Annual Trading Program," and 6 NYCRR Part 245, "CAIR SO<sub>2</sub> Trading Program."

The EPA is also proposing to approve into the New York SIP a revised version of 6 NYCRR Part 200 (Subpart 200.1) to address updated definitions at Part 200.1(f) that were submitted to the EPA on July 23, 2015 and that were associated with a repeal of 6 NYCRR Part 203, "Indirect Sources of Air Contamination."

The revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 SIP submission replace the previous versions of those rules that were included in a December 1, 2015 SIP submission. The EPA identified

deficiencies in the December 1, 2015 submission but on November 20, 2017 conditionally approved those previous versions of Parts 200, 244, and 245 (but not Part 243) into the SIP (82 FR 57362, December 5, 2017). In a July 6, 2017 letter to the EPA, New York committed to submitting a SIP revision that addressed the identified deficiencies by December 29, 2017. However, New York's response to the conditional approval was not submitted to the EPA by December 29, 2017. The November 30, 2018 SIP submittal addresses the identified deficiencies, but was submitted approximately 11 months late, so the conditional approval is treated as a disapproval.

The EPA did not take action on the previous version of 6 NYCRR Part 243 included in New York's December 1, 2015 submission. Following that submission, the EPA finalized the CSAPR Update rule<sup>2</sup> to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Among other things, starting in 2017 the CSAPR Update required New York EGUs to participate in the new CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program instead of the earlier CSAPR NO<sub>x</sub> Ozone Season Trading Program (now renamed the "Group 1" program) and replaced the ozone season budget for New York with a lower budget developed to address the revised and more stringent 2008 Ozone NAAQS. In a July 14, 2016 letter to the EPA, New York indicated that the State would revise 6 NYCRR Part 243 to conform with the final CSAPR Update. As indicated earlier in this section New York repealed 6 NYCRR Part 243 and replaced the rule in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program".

This action proposes to approve into New York's SIP state-determined allowance allocation procedures for ozone-season NO<sub>x</sub> allowances that would replace EPA's default allocation procedures for the control periods in 2021 and beyond. Additionally, EPA is proposing to approve into New York's SIP state-determined allowance allocation procedures for annual NO<sub>x</sub> and SO<sub>2</sub> allowances that would replace EPA's default allocation procedures for the control periods in 2023 and beyond. The proposed approval of this SIP revision does not alter any provision, other than the allowance allocation provisions, of either the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, the CSAPR NO<sub>x</sub> Annual

Trading Program or the CSAPR SO<sub>2</sub> Group 1 Trading Program as applied to New York units. The FIP provisions requiring those units to participate in the programs (as modified by this SIP revision) remain in place.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 2, 2019.

**Peter D. Lopez,**

*Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0387; FRL-9993-95-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of the Redesignation Request for the Washington, DC-MD-VA 2008 8-Hour Ozone National Ambient Air Quality Standard Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a request from the District of Columbia (the District) to redesignate to attainment their portion of the Washington, DC-MD-VA nonattainment area (hereafter "the Washington Area" or "the Area") for the 2008 8-hour ozone national ambient air quality standard (NAAQS or standard) (also referred to as the 2008 ozone NAAQS). EPA has already approved, as a revision to the District's SIP, a maintenance plan that demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 20, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0387 at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for

<sup>2</sup> 81 FR 74504 (October 26, 2016).

submitting comments. Once submitted, comments cannot be edited or removed from *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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**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:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What action is EPA proposing?
- II. What is the background for this proposed action?
- III. What is EPA’s analysis of the District’s redesignation request for the Washington Area?
  - A. Has the Washington Area attained the 2008 Ozone NAAQS?
  - B. Has the District met all applicable requirements of section 110 and part D of the CAA for the Washington Area and does the Washington Area have a fully approved SIP under section 110(k) of the CAA?
  - C. Are the air quality improvements in the Washington Area due to permanent and enforceable emission reductions?
  - D. Does the District have a fully approvable ozone maintenance plan for the Washington Area?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

**I. What action is EPA proposing?**

In this action, EPA is proposing to approve the District’s March 12, 2018

redesignation request as satisfying the requirements of CAA section 107(d)(3)(E) and redesignate the District from marginal nonattainment to attainment of the 2008 ozone NAAQS. EPA has already approved, as a revision to the District’s SIP, a maintenance plan that demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. *See* 84 FR 15108 (April 15, 2019).

**II. What is the background for this proposed action?**

Under the CAA, EPA establishes NAAQS for criteria pollutants 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 5 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 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).

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS based on the most recent three years of quality-assured ozone monitoring data. 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 Area was designated as marginal nonattainment for the 2008 ozone NAAQS. The Washington Area consists of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George’s in Maryland, the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia, and the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the applicable

NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On March 12, 2018, February 5, 2018, and January 3, 2018, the District, Maryland, and Virginia, respectively, formally submitted requests to redesignate their portions of the Washington Area from marginal nonattainment to attainment for the 2008 ozone NAAQS. The District, Maryland, and Virginia concurrently submitted, as revisions to their respective SIPs, a joint maintenance plan for the Washington Area prepared by the Metropolitan Washington Council of Governments (MWCOC) that demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. On April 15, 2019, EPA approved, as revisions to the District’s, Maryland’s, and Virginia’s SIPs, the joint maintenance plan for the Washington Area. 84 FR 15108. In the April 15, 2019 action, EPA also approved Maryland and Virginia’s requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to attainment of the 2008 ozone NAAQS.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the “Calcagni memorandum”);

5. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. “Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. “State Implementation Plan (SIP) requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (the “Shapiro memorandum”);

8. “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

**III. What is EPA’s analysis of the District’s redesignation request for the Washington area?**

*A. Has the Washington area attained the 2008 Ozone NAAQS?*

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. See CAA section 107(d)(3)(E)(i). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations, referred to as ozone design values, at each monitor must not exceed 0.075 ppm.<sup>1</sup> The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA’s Air Quality System (AQS). Ambient air quality monitoring

data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring season,<sup>2</sup> on average, for the three-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the three-year period. See section 2.3 of appendix P to 40 CFR part 50.

On November 14, 2017 (82 FR 52651), in accordance with section 181(b)(2)(A) of the CAA and Provisions for Implementation of the 2008 Ozone NAAQS (40 CFR part 51, subpart AA), EPA made a determination that the Washington Area attained the 2008 ozone NAAQS by the July 20, 2016 attainment date.<sup>3</sup> EPA’s determination was based upon three years of complete, certified, and quality-assured data for the 2013–2015 monitoring period.

In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Area, including preliminary 2016–2018 design values, as submitted by the District, Maryland, and Virginia and recorded in EPA’s AQS. The quality-assured, quality-controlled, and state-certified 2014 to 2017 ozone air quality data, as well as the preliminary 2016–2018 design values, show that the Washington Area continues to attain the 2008 ozone NAAQS. This data is summarized in Table 1 and is also included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0387.

TABLE 1—WASHINGTON AREA 2014–2016, 2015–2017, AND PRELIMINARY 2016–2018 OZONE DESIGN VALUES

AQS site ID	Site description	Jurisdiction	Annual 4th highest reading (ppm)					2014–2016 design value (ppm)	2015–2017 design value (ppm)	2016–2018 design value (ppm) <sup>4</sup>
			2014	2015	2016	2017	2018			
11–001–0041 <sup>5</sup>	420 34th Street NE, Washington, DC 20019.	District of Columbia.	.....	.....	0.065	0.056	0.050	0.056	0.060	0.057
11–001–0043 ..	2500 1st Street NW, Washington, DC.	District of Columbia.	0.068	0.072	0.072	0.071	0.073	0.070	0.071	0.072
11–001–0050 ..	300 Van Buren Street NW, Washington, DC 20012.	District of Columbia.	0.069	0.72	0.071	0.067	0.073	0.070	0.070	0.070

<sup>1</sup> The rounding convention under 40 CFR part 50, appendix P dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right of the third decimal place truncated. Thus, a computed three-year average ozone concentration of 0.0759 ppm or lower would meet the standard, but 0.0760 ppm or higher would be over the standard.

<sup>2</sup> The ozone season is defined by state in 40 CFR 58 appendix D. For the 2013–2015 time period, the ozone season was April–October for the states in the Area. Beginning in 2016, the ozone season is March–October for the states in the Washington Area. See 80 FR 65292, 65466–67 (October 26, 2015).

<sup>3</sup> As part of the final rule, “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan (SIP) Requirements,” for the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) (hereinafter, SIP Requirements Rule), EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS to be consistent with the United States Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *NRDC v. EPA*, 777 F.3d 456, 464–69 (D.C. Cir. 2014). The SIP Requirements Rule established a maximum deadline for marginal nonattainment areas to attain the 2008 ozone NAAQS of three years from the effective date of designation, or July 20, 2015. See

80 FR at 12268; 40 CFR 51.1103. On May 4, 2016, EPA determined that the Washington Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012–2014 monitoring period. In that same action, EPA determined that the Washington Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107. With that final rulemaking action, the new attainment date for the Washington Area was July 20, 2016. See 81 FR 26697 (May 4, 2016).

TABLE 1—WASHINGTON AREA 2014–2016, 2015–2017, AND PRELIMINARY 2016–2018 OZONE DESIGN VALUES—Continued

AQS site ID	Site description	Jurisdiction	Annual 4th highest reading (ppm)					2014–2016 design value (ppm)	2015–2017 design value (ppm)	2016–2018 design value (ppm) <sup>4</sup>
			2014	2015	2016	2017	2018			
24–009–0011 ..	350 Stafford Road .....	Maryland .....	0.070	0.067	0.070	0.066	0.067	0.069	0.067	0.067
24–017–0010 ..	14320 Oaks Road .....	Maryland .....	0.070	0.068	0.073	0.068	0.068	0.070	0.069	0.069
24–021–0037 ..	Frederick County Airport .....	Maryland .....	0.063	0.070	0.070	0.067	0.067	0.067	0.069	0.068
24–031–3001 ..	Lathrop E. Smith Environmental Education Center.	Maryland .....	0.064	0.072	0.068	0.065	0.069	0.068	0.068	0.067
24–033–0030 ..	Howard University's Beltsville Laboratory.	Maryland .....	0.065	0.072	0.070	0.069	0.070	0.069	0.070	0.069
24–033–8003 ..	PG County Equestrian Center	Maryland .....	0.069	0.069	0.073	0.072	0.070	0.070	0.071	0.071
24–033–9991 ..	Powder Mill Rd Laurel, MD 20708.	Maryland .....	0.069	0.067	0.070	0.070	0.073	0.068	0.069	0.071
51–013–0020 ..	S 18th and Hayes St .....	Virginia .....	0.071	0.073	0.072	0.070	0.070	0.072	0.071	0.070
51–059–0030 ..	STA. 46–B9, Lee Park, Telegraph Road.	Virginia .....	0.065	0.072	0.073	0.068	0.066	0.070	0.071	0.069
51–107–1005 ..	38–I, Broad Run High School, Ashburn.	Virginia .....	0.063	0.071	0.068	0.066	0.065	0.067	0.068	0.066
51–153–0009 ..	James S. Long Park .....	Virginia .....	0.062	0.067	0.067	0.065	0.065	0.065	0.066	0.065

EPA notes that the data for the PG County Equestrian Center monitor (AQS Site ID 24–033–8003) in Table 1 excludes data associated with exceptional event (EE) episodes for 8-hour ozone data influenced by the Fort McMurray wildfire on May 25 and 26, 2016, and northwestern Canada wildfires on July 21 and 22, 2016. The Maryland Department of the Environment (MDE) determined that the Fort McMurray and northwestern Canada wildfires caused elevated ozone concentrations at 16 and 12 monitors, respectively, throughout Maryland, including the PG County Equestrian Center monitor. By letters and enclosures dated May 26, 2017 and October 20, 2017, MDE submitted EE demonstrations related to the May and July 2016 wildfires. On December 26, 2017, EPA concurred on MDE's EE demonstration for numerous monitors, including the PG County Equestrian Center monitor.<sup>6</sup> Pursuant to EPA's concurrence, EPA excluded certain data, affected by the wildfires, from AQS,

<sup>4</sup> As noted previously, the 2016–2018 design values are preliminary.

<sup>5</sup> The 2014 and 2015 data at monitoring site 11–001–0041 (also referred to as “the River Terrace monitor”) is incomplete. Therefore, the 2016 and 2017 design values are invalid. The River Terrace monitor was temporarily shut down in March 2014 due to renovations at the monitoring site. The River Terrace monitor was reinstated in 2016, and began operation in May 2016. The temporary shutdown of the River Terrace monitor is discussed in more detail in the TSD for EPA's August 8, 2018 (83 FR 39019) notice of proposed rulemaking (NPRM), which is available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0215.

<sup>6</sup> MDE's exceptional event demonstrations and EPA's concurrence are included in the docket for this rulemaking, available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0387.

thereby affecting the calculated design values at the corresponding monitors. Due to the exclusion of the exceptional events data, the PG County Equestrian Center monitor's 2014–2016 design value decreased from 0.071 ppm to 0.070 ppm and the 2015–2017 design value and preliminary 2016–2018 design value decreased from 0.072 ppm to 0.071 ppm.<sup>7</sup> However, the design value at the PG County Equestrian Center monitor would have been below the 2008 ozone NAAQS of 0.075 ppm regardless of the exclusion of the exceptional events data.

The Washington Area's most recent monitoring data supports EPA's previous determination that the Area has attained, and continues to attain, the 2008 ozone NAAQS. In addition, as discussed in EPA's August 8, 2018 (83 FR 39019) NPRM, the District, Maryland, and Virginia have committed to continue monitoring ambient ozone concentrations in accordance with 40 CFR part 58. Therefore, EPA is proposing to determine that the Washington Area continues to attain the 2008 8-hour ozone NAAQS, which is required by CAA section 107(d)(3)(E)(i) for redesignation of a nonattainment area to attainment.

*B. Has the District met all applicable requirements of section 110 and part D of the CAA for the Washington Area and does the Washington Area have a fully approved SIP under section 110(k) of the CAA?*

In accordance with section 107(d)(3)(E)(v) of the CAA, in order to redesignate the Washington Area to

attainment, the District must meet all requirements applicable to the Washington Area under CAA section 110 (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas). In addition, in accordance with section 107(d)(3)(E)(ii) of the CAA, the District's SIP for the Washington Area must be fully approved under CAA section 110(k).

The September 4, 1992 Calcagni memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also* Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–12466, (March 7, 1995) (redesignation of Detroit-Ann Arbor).<sup>8</sup> Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. *See* CAA section 175A(c). *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St.

<sup>7</sup> This data is included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0387.

<sup>8</sup> The Calcagni memorandum and Shapiro memorandum are included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0387.

Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

EPA has determined that, in accordance with section 107(d)(3)(E)(v), the District has met all SIP requirements under section 110 of the CAA and part D of Title I of the CAA applicable for purposes of the redesignation of the District's portion of the Washington Area. In addition, EPA has determined that, in accordance with CAA section 107(d)(3)(E)(ii), the District's SIP is fully approved with respect to all requirements applicable for purposes of this redesignation. In making these determinations, EPA ascertained what requirements are applicable to the Area and determined that the portions of the District's SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements. EPA's rationale is discussed in more detail in the following sections.

#### 1. The District Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Washington Area for Purposes of Redesignation

##### a. Section 110 General Requirements for SIPs

Pursuant to CAA section 110(a)(1), whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan (*i.e.* "SIP") for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) of Title I of the CAA contains the general requirements for a SIP, also referred to as "infrastructure" requirements. The infrastructure requirements of section 110(a)(2), include, but are not limited to, the following: (1) Submit a SIP that has been adopted by the state after reasonable public notice and hearing; (2) include enforceable emission limitations and other control measures, means, or techniques necessary to meet the requirements of the CAA; (3) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (4) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (5) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D nonattainment new source review (referred to as "part D NNSR," "NNSR," or "nonattainment NSR") permit programs; (6) include provisions for stationary source emission control

measures, monitoring, and reporting; (7) include provisions for air quality modeling; and, (8) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants, in accordance with the NO<sub>x</sub> SIP Call,<sup>9</sup> amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298), and March 2, 2000 (65 FR 11222), and the Cross-State Air Pollution Rule (CSAPR) Update, October 26, 2016 (81 FR 74504). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation (or redesignation) of any particular area within the state. EPA concludes that the SIP requirements linked with an area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. Thus, the requirements of section 110(a)(2)(D) of the CAA are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), and 68 FR 25418, 25426–25427 (May 13, 2003).

Similarly, other section 110 elements that are neither connected with attainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. An area that is redesignated from nonattainment to attainment will remain subject to these statewide requirements after the area is

<sup>9</sup> On October 27, 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> SIP call requires the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. EPA developed the NO<sub>x</sub> Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as "large non-EGUs", to participate in a regional NO<sub>x</sub> cap and trade program. The NO<sub>x</sub> SIP call also established reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

redesignated to attainment of the 2008 ozone NAAQS. The section 110(a)(2) requirements that are linked to the area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The section 110(a)(2) elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability (*e.g.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport region (OTR) requirements. *See, e.g.*, Reading, Pennsylvania, proposed and final rulemakings for redesignation, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking for redesignation, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking for redesignation, 60 FR 62748 (December 7, 1995). For further information and analysis, see the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

EPA has reviewed the District's SIP and concludes that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On April 13, 2015 and August 31, 2018, EPA approved elements of the District's SIP submittal addressing the section 110(a)(2) requirements for the 2008 ozone NAAQS. *See* 80 FR 19538 (April 13, 2015) and 83 FR 44498 (August 31, 2018).<sup>10</sup> As explained previously, the general requirements of section 110(a)(2) are statewide requirements that are not linked to the 2008 8-hour ozone nonattainment status of the Washington Area and are therefore not "applicable requirements" for purpose of the review of the District's 2008 ozone NAAQS redesignation request.

<sup>10</sup> EPA's April 13, 2015 final rule approved the District's infrastructure SIP submittal as satisfying all requirements of CAA section 110(a)(2) for the 2008 ozone NAAQS, except for the requirements under CAA section 110(a)(2)(D)(i)(I) and the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J). *See* 80 FR 19538. In that final rule, EPA did not take rulemaking action on the portion of the District's infrastructure SIP submittal related to PSD, however, EPA notes that the District is subject to a Federal implementation plan (FIP) which incorporates the Federal PSD permitting requirements of 40 CFR 52.21 into the District's SIP. *See* 40 CFR 52.499. EPA's August 31, 2018 final rule approved the District's infrastructure SIP submittal as satisfying the requirement of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. *See* 83 FR 44498.

Because the District's SIP satisfies all of the general SIP elements and requirements set forth in CAA section 110(a)(2) applicable to and necessary for redesignation, EPA concludes that the District has satisfied the criterion of section 107(d)(3)(E)(v) regarding section 110 of the CAA.

#### b. Part D Requirements

Areas designated nonattainment for the ozone NAAQS are subject to the applicable nonattainment area and ozone-specific planning requirements of part D of the CAA. Section 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 172(c), under part D of the CAA, sets forth the basic requirements of air quality plans for states with nonattainment areas for all pollutants that are required to submit plans pursuant to section 172(b). Section 182 of the CAA, found in subpart 2 of part D, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.<sup>11</sup> The Washington Area was classified as marginal under subpart 2 of part D of the CAA for the 2008 ozone NAAQS. As such, the Area is subject to the subpart 1 requirements contained in CAA sections 172(c) and 176. The Area is also subject to the subpart 2 requirements contained in CAA section 182(a) (marginal nonattainment area requirements), which include, but are not limited to, submitting a baseline emissions inventory, adopting a SIP requiring emissions statements from stationary sources, and implementing a NNSR program for the relevant ozone standard. A thorough discussion of the requirements contained in CAA section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Additionally, states located in the OTR, which includes the District,<sup>12</sup> are

<sup>11</sup> 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 3 years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. See CAA section 181(a)(1).

<sup>12</sup> The OTR is comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and the Consolidated Metropolitan Statistical Area, which includes the District of Columbia and portions of Virginia. The areas designated as in the Virginia portion of the OTR are as follows: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. See, e.g., "Approval and Promulgation of Air Quality Implementation Plans; Virginia; NSR in the

also subject to the requirements of CAA section 184. All areas located in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonable available control technology (RACT), NNSR, enhanced vehicle inspection and maintenance (I/M), and State II vapor recovery or a comparable measure relating to gasoline dispensing facilities.

EPA has interpreted the section 184 OTR requirements, including the NNSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR even after redesignation to attainment. Therefore, states remain obligated to have NNSR, as well as RACT, and I/M programs, even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's designation and classification, and thus are properly considered not relevant to an action changing an area's designation. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

#### i. CAA Section 172 Requirements

CAA section 172(c) contains general requirements for nonattainment plans. As stated previously, a thorough discussion of these requirements may be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992). As provided in CAA part D, subpart 2, for marginal ozone nonattainment areas such as the Washington Area, the ozone specific requirements of section 182(a) supersede (where overlapping) the attainment planning requirements that would otherwise apply under section 172(c).

Upon determination by EPA that the Washington Area attained the 2008 ozone NAAQS, the requirements of CAA section 172(c) for the District to submit for their portion of the Washington Area an attainment demonstration and associated reasonably available control measures (RACT), a reasonable further progress (RFP) plan, contingency measures for failure to attain or make reasonable progress, and other planning SIPs

Ozone Transport Region", 71 FR 39570 (July 13, 2006) and 71 FR 890 (January 6, 2006).

related to attainment of the 2008 ozone NAAQS were suspended. See 40 CFR 51.1118. Once the Area is redesignated to attainment for the 2008 ozone NAAQS, these requirements no longer apply for the 2008 ozone NAAQS unless EPA determines that the Area has violated the 2008 ozone NAAQS, at which time such plans are required to be submitted. As stated previously, on November 14, 2017 (82 FR 52651), EPA determined that the Washington Area had attained the 2008 ozone NAAQS by the July 20, 2016 attainment date. Furthermore, as explained in section III.A of this action, the Washington Area continues to attain the 2008 ozone NAAQS. Therefore, because the Washington Area has attained the 2008 ozone NAAQS and the Area continues to attain the standard, no additional measures are needed to provide for attainment and the requirements of section 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) are not considered to be applicable for purposes of redesignation of the Washington Area for the 2008 ozone NAAQS.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. This requirement was not suspended by EPA's determination of attainment for the Washington Area and is superseded by the inventory requirement in section 182(a)(1) discussed later in this notice.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NNSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without NNSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." The District lacks a SIP-approved PSD program; however, it is subject to a FIP which incorporates EPA's PSD permitting requirements of 40 CFR 52.21. See 40 CFR 52.499.

In addition, as explained previously, the Washington Area is included in the

OTR established by Congress in section 184 of the CAA. Therefore, sources located in the District will remain subject to the part D NNSR requirements even after the Washington Area is redesignated to attainment. Since the part D NNSR requirements apply to the Washington Area regardless of its attainment status, the part D NNSR requirements are not considered to be relevant for purposes of the redesignation of the Washington Area. Regardless, the District has an approved part D NNSR program.<sup>13</sup> See 62 FR 40937 (July 31, 1997).

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, the District's SIP meets the applicable requirements of section 110(a)(2) for purposes of redesignation.

#### ii. CAA Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements<sup>14</sup> as not applicable for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state

conformity rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

#### iii. Section 182 Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of NO<sub>x</sub> and VOC emitted within the boundaries of the ozone nonattainment area. On July 17, 2014, the District and Virginia submitted a joint 2011 base year emissions inventory addressing NO<sub>x</sub> and VOC emissions, as well as carbon monoxide (CO) emissions, for the Washington Area. On August 4, 2014, Maryland submitted its 2011 base year emissions inventory for the Washington Area, which also addressed NO<sub>x</sub>, VOC, and CO. EPA approved the District's, Maryland's, and Virginia's base year emissions inventories for NO<sub>x</sub> and VOC for the 2008 ozone NAAQS on May 13, 2015 (80 FR 27255). On July 23, 2015 (80 FR 43625), EPA approved the District's, Maryland's, and Virginia's base year emission inventories for CO.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. EPA approved the District's SIP revision satisfying the section 182(a)(2) RACT "fix-up" requirement on October 27, 1999 (64 FR 57777).

Section 182(c)(3) of the CAA requires areas classified as serious and above to adopt and implement an enhanced I/M program. The Washington Area was classified as severe for the 1979 1-hour ozone NAAQS, and therefore enhanced I/M was required. In addition, section 184(b)(1)(a) of the CAA requires areas located in the OTR that are a metropolitan statistical area, or part thereof, with a population of 100,000 or more to meet the enhanced I/M program requirements of CAA section 182(c)(3). EPA approved the District's enhanced I/M program into the District's SIP on June 11, 1999 (64 FR 31498).

CAA section 182(a)(2)(C) and section 182(a)(4) contain source permitting and offset requirements (NNSR). As discussed previously, the part D NNSR requirements will continue to apply to the Washington Area, regardless of attainment status, due to the Washington Area being part of the OTR. Therefore, EPA concludes that the

District need not have a fully approved part D NSR program for purposes of this redesignation request. As stated previously, however, the District has an approved NNSR program. See 62 FR 40937 (July 31, 1997).

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require owners or operators of stationary sources to annually submit emission statements documenting actual NO<sub>x</sub> and VOC emissions. The District submits periodic emission inventories as required by CAA section 182(a)(3). As stated above, EPA approved the District's, Maryland's, and Virginia's base year emissions inventories for NO<sub>x</sub> and VOC for the 2008 ozone NAAQS on May 13, 2015 (80 FR 27255). With regard to the stationary source emissions statements requirement of CAA section 182(a)(3)(B), EPA approved the District's emissions statements rule into the District's SIP on May 26, 1995 (60 FR 27944). The District's emissions statements rule requires that certain sources in the District report annual NO<sub>x</sub> and VOC emissions and satisfies the requirements of CAA section 182(a)(3)(B). On May 25, 2018, the District submitted, as a formal revision to its SIP, a statement certifying that the District's existing emissions statements rule covers the District's portion of the Washington Area and satisfies the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. EPA proposed approval of the District's emissions statements certification for the 2008 ozone NAAQS (finding that the District's existing SIP-approved emissions statements rule satisfies the CAA section 182(a)(3) requirements for the 2008 ozone NAAQS) on March 5, 2019 (84 FR 7858).<sup>15</sup>

The District has satisfied all applicable SIP requirements under section 110 and part D of title I of the CAA for purposes of redesignation of the District for the 2008 ozone NAAQS. Therefore, EPA has determined that the District satisfies the requirements of CAA section 107(d)(3)(E)(v) for redesignation of the District's portion of the Washington Area.

#### 2. The District Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, the District has adopted and submitted, and EPA has approved, provisions addressing the

<sup>15</sup> While not prejudging the outcome of EPA's rulemaking on the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS, EPA expects to finalize rulemaking on that SIP revision before taking final action on this redesignation action.

<sup>13</sup> On May 23, 2018 the District submitted a SIP revision certifying that 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), is at least as stringent as the Federal NNSR requirements for the Washington Area for the 2008 ozone NAAQS. See 40 CFR 51.165. EPA proposed approval of the District's NNSR program certification for the 2008 ozone NAAQS on March 19, 2019. 84 FR 9995.

<sup>14</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

various SIP elements applicable for the ozone NAAQS. As discussed previously, EPA has approved the District's SIP for the 2008 ozone NAAQS under section 110(k) for all requirements applicable for purposes of redesignation of the Washington Area.<sup>16</sup> EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

Therefore, EPA has determined that the District's SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with CAA section 107(d)(3)(E)(ii).

*C. Are the air quality improvements in the Washington Area due to permanent and enforceable emission reductions?*

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. The District has demonstrated that the observed ozone air quality improvement in the Washington Area is due to permanent and enforceable reductions in NO<sub>x</sub> and VOC emissions resulting from measures approved as part of the District's SIP as well as Federal measures.

In making this demonstration, the District has calculated the change in emissions between 2011 and 2014. The change in emissions is shown in Table 2. The District attributes the decrease in emissions and corresponding improvement in air quality during this time period to a number of regulatory measures that have been implemented in the Washington Area and upwind areas in recent years. Based on the information summarized in the following sections, the District has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions pursuant to CAA section 107(d)(3)(E)(iii).

1. Permanent and Enforceable Emission Controls Implemented

a. Federal Emission Control Measures

A variety of Federal and state control programs have contributed to reduced on-road, point source, and nonroad emissions of NO<sub>x</sub> and VOC in the Washington Area, with additional emission reductions expected to occur in the future as older equipment and vehicles are replaced with newer, compliant models. Federal emission control measures include the following:

Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower NO<sub>x</sub> and VOC emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimated in the final rule that this program will reduce annual NO<sub>x</sub> emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented and non-compliant vehicles have all been retired.

Control of Emissions From Nonroad Spark-Ignition Engines and Equipment

On October 8, 2008 (73 FR 59034), EPA finalized emission standards for new nonroad spark-ignition engines. The exhaust emission standards applied beginning in 2010 for new marine spark-ignition engines and in 2011 and 2012 for different sizes of new land-based, spark-ignition engines at or below 19 kW (*i.e.* small engines used primarily in lawn and garden applications). In the October 8, 2008 final rule, EPA estimated that by 2030 the rule will result in annual nationwide reductions of 604,000 tons of volatile organic hydrocarbon emissions, 132,200 tons of NO<sub>x</sub> emissions, and 5,500 tons of directly-emitted PM<sub>2.5</sub> emissions. These reductions correspond to significant reductions in the formation of ground-level ozone.

Nonroad Diesel Engines Tier 1 and Tier 2

On June 17, 1994 (59 FR 31306), EPA made an affirmative determination under section 213(a)(2) of the CAA that nonroad engines are significant contributors to ambient ozone or CO levels in more than one nonattainment area. In the same notice, EPA also made a determination under CAA section 213(a)(4) that other emissions from compression-ignition (CI) nonroad engines rated at or above 37 kilowatts (kW) cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In the June 17, 1994 final rule, EPA set a first phase of emission standards (Tier 1 standards) for nonroad diesel engines rated 37 kW and above. These standards apply to nonroad, compression-ignition (*i.e.* diesel-powered) utility engines including, but not limited to, farm, construction, and industrial equipment, rated at or above 37 kW. On October 23, 1998 (63 FR 56968), EPA finalized a second phase of emission standards (Tier 2 standards) for nonroad diesel engines rated under 37 kW. These emission standards have resulted in a decrease in NO<sub>x</sub> emissions from the combustion of diesel fuel used to power this equipment. The Tier 1 and Tier 2 standards for nonroad diesel engines will continue to result in emission reductions as older equipment is replaced with newer, compliant models.

Emissions Standards for Large Spark Ignition Engines

On November 8, 2002 (67 FR 68242), EPA established emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snow mobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When the emission standards are fully implemented in 2030, EPA expects a national 75 percent reduction in hydrocarbon (HC) emissions, 82 percent reduction in NO<sub>x</sub> emissions, 61 percent reduction in CO emissions, and a 60 percent reduction in direct particulate matter (PM) emissions from these engines, equipment, and vehicles compared to projected emissions if the standards were not implemented.

Standards for Reformulated and Conventional Gasoline

On February 16, 1994 (59 FR 7716), EPA finalized regulations requiring that gasoline in certain areas be reformulated

<sup>16</sup> See Footnote 8.



to reduce vehicle emissions of toxic and ozone-forming compounds, including NO<sub>x</sub> and VOC. Reformulated gasoline (RFG) is required in the Washington Area. The first phase of the RFG program (Phase I) began in 1995 and the second phase (Phase II) began in 2000. These standards affect various gasoline-powered non-road mobile sources, such as lawn equipment, generators, and compressors. EPA estimates that Phase I of the RFG program resulted in a 2 percent and 17 percent annual reduction in NO<sub>x</sub>, and VOCs, respectively, from 1995 emission levels and prevented 64,000 tons of smog-forming pollutants, including NO<sub>x</sub> and VOC, from being emitted into the air from 1995 to 2000. Phase II of the RFG program, which began in 2000, was expected to reduce emissions of NO<sub>x</sub> and VOC by 7 percent and 27 percent, respectively, from 1995 emission levels and reduce emissions of smog-forming pollutants by an additional 41,000 tons.<sup>17</sup> The RFG program continues to provide emission reductions in the Washington Area as the use of RFG results in less vehicle emissions of NO<sub>x</sub> and VOC compared to the use of conventional gasoline.

Emission Standards for Locomotives and Locomotive Engines

On April 16, 1998 (63 FR 18978), EPA established emission standards for NO<sub>x</sub>, HC, CO, PM, and smoke from newly manufactured and remanufactured diesel-powered locomotives and locomotive engines. These emission standards were effective in 2000 and are

expected to result in a more than 60 percent reduction in NO<sub>x</sub> emissions from locomotives by 2040 compared to 1995 baseline levels.

b. Control Measures Specific to the Washington Area Maryland Healthy Air Act

In addition to the measures referenced previously, a reduction of emission of ozone precursors can also be attributed to the Maryland Healthy Air Act (Annotated Code of Maryland Environment Title 2 Ambient Air Quality Control Subtitle 10 Healthy Air Act Sections 2–1001 to 2–1005, with implementing regulations at COMAR 26.11.27 Emission Limitations for Power Plants). The Maryland Health Air Act (HAA) was effective on July 16, 2007 and approved by EPA on September 4, 2008 (73 FR 51599). The HAA established limits on the amount of NO<sub>x</sub> and SO<sub>2</sub> emissions affected facilities in Maryland could emit and required the installation of on-site pollution controls at 15 power plants in Maryland. The first phase of the HAA occurred between 2009 and 2010 and reduced NO<sub>x</sub> emissions from affected sources by almost 70% compared to 2002 levels. The second phase of the HAA occurred between 2012 and 2013. Maryland estimates that the HAA will reduce NO<sub>x</sub> emissions by approximately 75% from 2002 levels.

Closure of GenOn Potomac River LLC Facility

The decrease in emissions of ozone precursors is also attributable to the

closure of the GenOn Potomac River plant located in Alexandria, Virginia. This 482-megawatt electrical generating facility consisted of five coal-fired boilers and emitted 557.7 tons of NO<sub>x</sub> annually and 2.7 tons of NO<sub>x</sub> per ozone season day (tpd) in 2011. The plant ceased operations and signed a mutual determination letter on December 21, 2012, agreeing to the permanent shutdown of the source and revoking all permits for the facility.<sup>18</sup> Therefore, this closure is permanent and Federally enforceable.

2. Emission Reductions

The District calculated the change in emissions between 2011 and 2014 throughout the entire Washington Area to demonstrate that air quality has improved. The change in emissions is shown in Table 2. The District used the 2011 base year emissions inventory for the Washington Area as the nonattainment year inventory because 2011 was one of the three years used to designate the area nonattainment for the 2008 ozone NAAQS. EPA approved the Washington Area 2011 base year inventory as meeting the requirements of CAA section 182(a)(1) on May 13, 2015 (80 FR 27276) for NO<sub>x</sub> and VOC emissions and July 23, 2015 (80 FR 43625) for CO emissions. As explained in EPA’s August 8, 2018 (83 FR 39019) NPRM, 2014 was used as the attainment year inventory in the maintenance plan for the Washington Area.

TABLE 2—2011–2014 EMISSIONS REDUCTION FOR THE WASHINGTON, DC-MD-VA AREA

2011	2014	Δ 2011–2014	Percent reduction from 2011
<b>VOC Emissions (tpd)</b>			
295.0	259.4	35.6	12.1
<b>NO<sub>x</sub> Emissions (tpd)</b>			
436.5	296.9	139.6	32.0
<b>CO Emissions (tpd)</b>			
1,800.8	1,617.9	182.9	10.2

**Note:** 2011 emissions data is from the 2011 base year emissions inventory for the Washington, DC–MD–VA 2008 ozone NAAQS nonattainment area that was approved by EPA on May 13, 2015 (80 FR 27276) for NO<sub>x</sub> and VOC emissions and July 23, 2015 (80 FR 43625) for CO emissions.

<sup>17</sup> See <https://www.epa.gov/gasoline-standards/reformulated-gasoline> for more information on the RFG program.

<sup>18</sup> See Mutual Determination Letter from Virginia Department of Environmental Quality to Mr. William Lee Davis, President, GenOn Potomac River, LLC, Subject: Mutual Determination of Permanent Shutdown of the Potomac River

Generating Station, December 20, 2012 included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA–R03–OAR–2018–0387.

Table 2 shows that emissions of VOC and NO<sub>x</sub> in the Washington area were reduced by 35.6 tpd and 139.6 tpd, respectively, between 2011 and 2014. As discussed previously, the District has identified several Federal rules that resulted in the reduction of NO<sub>x</sub> and VOC emissions from 2011 to 2014. Therefore, the District has shown that the air quality improvements in the Washington Area are due to permanent and enforceable emission reductions.

*D. Does the District have a fully approvable ozone maintenance plan for the Washington Area?*

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.

In conjunction with their requests to redesignate their respective portions of the Washington Area to attainment of the 2008 ozone NAAQS, the District, Maryland, and Virginia submitted, as a revision to their SIPs, a plan to provide for maintenance of the 2008 ozone NAAQS through 2030, which is more than 10 years after the expected effective date of the redesignation to attainment of the Washington Area. On April 15, 2019, EPA approved the District, Maryland, and Virginia's maintenance plan for the Washington Area as a revision to the District's, Maryland's, and Virginia's SIPs. See 84 FR 15108. Therefore, EPA finds that the

District has satisfied the maintenance plan requirement of CAA section 107(d)(3)(E)(iv) for redesignation of the Washington Area.

#### IV. Proposed Action

EPA is proposing to approve the District's March 12, 2018 request to redesignate to attainment of the District's portion of the Washington Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under the CAA, the redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 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 (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 rule, proposing approval of the District's March 12, 2018 redesignation request for the District's portion of the Washington Area, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 9, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

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### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### 41 CFR Parts 51-8

RIN 3037-AA10

#### Proposed Public Availability of Agency Materials

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.