

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R03–OAR–2017–0149; FRL–9968–00–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Maryland Portion of the Philadelphia-Wilmington-Atlantic City Nonattainment Area**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 inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City marginal nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland submitted the emission inventory, which included the ozone precursors, nitrogen oxides (NO_x) and volatile organic compounds (VOC), as well as several other pollutants, through the Maryland Department of the Environment (MDE) to meet the nonattainment requirements for marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS as a revision to the Maryland State Implementation Plan (SIP) as the inventory for NO_x and VOC is in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 24, 2017 without further notice, unless EPA receives adverse written comment by October 25, 2017. 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 No. EPA–R03–OAR–2017–0149 at <https://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814–2043, or by email at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Ground level ozone is formed when NO_x and VOC react in the presence of sunlight. NO_x and VOC are referred to as ozone precursors and are emitted by many types of pollution sources, including motor vehicles, power plants, 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 exposure to ozone. These effects are more pronounced in 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. In response to this scientific evidence, EPA promulgated the first ozone NAAQS in 1979, the 0.12 part per million (ppm) 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979). EPA had previously promulgated a NAAQS for total photochemical oxidants.

On July 18, 1997, EPA promulgated a revised 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 revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008).¹

¹ On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS to 0.070 ppm. *See* 80 FR 65292 (October 16, 2015). This rulemaking addresses the 2008 8-hour ozone NAAQS and does not address the 2015 8-hour ozone NAAQS.

On May 21, 2012, the Philadelphia-Wilmington-Atlantic City area was designated as marginal nonattainment for the 2008 8-hour ozone NAAQS. 77 FR 30088. The designation of the Philadelphia-Wilmington-Atlantic City area as marginal nonattainment was effective July 20, 2012. The Philadelphia-Wilmington-Atlantic City nonattainment area is comprised of Cecil County in Maryland, as well as counties in Delaware, New Jersey, and Pennsylvania. Under section 172(c)(3) of the CAA, Maryland is required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants, *i.e.* the ozone precursors NO_x and VOC, in its marginal nonattainment area, *i.e.*, the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area.

II. Summary of SIP Revision and EPA Analysis

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources (point, nonpoint, nonroad, and onroad) of the relevant pollutant or pollutants in the nonattainment area. CAA section 182(a)(1) requires that areas designated as nonattainment and classified as marginal submit an inventory of all sources of ozone precursors no later than 2 years after the effective date of designation. EPA's guidance for emissions inventory development calls for actual emissions to be used in the base year inventory. The state must report annual emissions as well as "summer day emissions." As defined in 40 CFR 51.900(v), "summer day emissions" means, "an average day's emissions for a typical summer work weekday. The state will select the particular month(s) in summer and the day(s) in the work week to be represented."

On January 19, 2017, MDE submitted a formal revision (SIP #16–15) to its SIP. The SIP revision consists of the 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. MDE selected 2011 as its base year for SIP planning purposes, as recommended in EPA's final rule, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements." *See* 80 FR 12263 (March 6, 2015). MDE's 2011 base year inventory includes emissions estimates covering the general source categories of stationary point, area (nonpoint), nonroad mobile, onroad mobile, and Marine-Air-Rail (M–A–R).

In its 2011 base year inventory, MDE reported actual annual emissions and typical summer day emissions for the months of May through September for NO_x, VOC, and carbon monoxide (CO). Although MDE also reported annual emissions for fine particulate matter

(PM_{2.5}), sulfur dioxide (SO₂), and ammonia (NH₃) and typical summer day emissions for CO, in this approval of the 2011 base year emissions inventory for the 2008 ozone NAAQS, EPA is approving only relevant ozone precursors, which are VOC and NO_x.²

Table 1 summarizes the 2011 VOC and NO_x emission inventory by source sector for Maryland's marginal nonattainment area. Annual emissions are given in tons per year (tpy) and summer weekday emissions are given by tons per day (tpd).

TABLE 1—SUMMARY OF 2011 EMISSIONS OF OZONE PRECURSORS FOR THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA

Source sector	Summer weekday (tpd)		Annual (tpy)	
	VOC	NO _x	VOC	NO _x
Point	0.301	2.63	64.91	76.19
Area	2.863	0.31	937.78	242.02
Nonroad	5.127	2.01	1,054.93	529.02
Onroad	2.29	7.50	791.98	2,730.44
M–A–R	0.030	0.46	11.03	167.97
Anthropogenic Subtotal	10.61	12.90	2,860.63	3,745.63

Point sources are large, stationary, and identifiable sources of emissions that release pollutants into the atmosphere. Maryland obtained its point source data from the MDE Air and Radiation Management Administration (ARMA) point source emissions inventory. ARMA identifies and inventories stationary sources for the point source emissions inventory through inspections, investigations, permitting, and equipment registrations.

Area sources, also known as nonpoint sources, are sources of pollution that are small and numerous and have not been inventoried as specific point or mobile sources. To inventory these sources, they are grouped so that emissions can be estimated collectively using one methodology. Examples include residential heating emissions and emissions from consumer solvents. MDE calculated nonpoint emissions for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area by multiplying emissions factors specific for each source category with some known indicator of collective activity for each source category, such as population or employment data.

Nonroad sources are mobile sources other than onroad vehicles, including aircraft, locomotives, construction and agricultural equipment, and marine

vessels. Emissions from different source categories are calculated using various methodologies. MDE relied on EPA's nonroad emissions calculations from the National Mobile Inventory Model (NMIM—April 5, 2009). Onroad or highway sources are vehicles, such as cars, trucks, and buses, which are operated on public roadways. MDE estimated onroad emissions using EPA's Motor Vehicle Emission Simulator (MOVES) model, version 2010a, and appropriate activity levels, such as vehicle miles traveled (VMT) estimates developed from vehicle count data maintained by the State Highway Administration (SHA) of the Maryland Department of Transportation (MDOT). M-A-R sources include marine vessels, airports, and railroad locomotives. MDE estimated M-A-R emissions using data from surveyed sources or state and federal reporting agencies.

EPA reviewed Maryland's 2011 base year emission inventory's results, procedures, and methodologies for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area and found them to be acceptable and approvable for sections 110, 172(c)(3) and 182(a)(1) of the CAA. EPA's review and analysis is detailed in a Technical Support Document (TSD) prepared for this rulemaking. The TSD is available online

at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2017-0149.

III. Final Action

EPA is approving the Maryland January 19, 2017 SIP revision as meeting requirements for a base year inventory for the 2008 8-hour ozone NAAQS for the Philadelphia-Wilmington-Atlantic City nonattainment area because the inventory for ozone precursors was prepared in accordance with requirements in sections 110, 172(c)(3) and 182(a)(1) of the CAA and its implementing regulations including 40 CFR 51.915. 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 this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 24, 2017 without further notice unless EPA receives adverse comment by October 25, 2017. 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

² The actual annual emissions and typical summer day emissions were summarized by MDE in Table 1–1: 2011 Base Year SIP Emission Inventory Summary. A discrepancy was found between the area annual emissions reported for PM_{2.5} and NH₃ in Table 1–1 and the area annual emissions reported for PM_{2.5} and NH₃ in Table 4–1: 2011 Base Year SIP Area Source Emission Inventories and the Nonpoint Annual data table under Appendix C Area/Nonpoint Sources. Since the anthropogenic totals in Table 1–1 correspond to the annual emissions values, the anthropogenic

totals for PM_{2.5} and NH₃ in Table 1–1 were also affected by the discrepancy. In a correction letter, MDE confirmed that the area annual emissions for PM_{2.5} and NH₃ in Table 1–1 are 456.50 tpy for PM_{2.5} and 477.15 tpy for NH₃. MDE also confirmed that the corresponding anthropogenic totals for PM_{2.5} and NH₃ are 625.04 tpy and 530.10 tpy. MDE has submitted a corrected version of page 3 of the 2011 base year inventory to reflect the necessary corrections to Table 1–1. The corrected version as well as the correction letter are included in the docket for this rulemaking even though the CAA at

sections 172 and 182 only require an inventory of ozone precursors. See July 20, 2017 letter from Brian Hug, Program Manager, Maryland Department of the Environment to Cecil Rodrigues, Acting Regional Administrator, EPA Region III, Subject: SIP #16–15 "2011 Base Year Emissions Inventory for the Maryland Portion of the Philadelphia-Atlantic City, PA-NJ-DE-MD 2008 Ozone NAAQS Nonattainment Area (Cecil County, MD)" Minor Corrections.

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. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 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 November 24, 2017. 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 Maryland's 2011 base year inventory for the 2008 8-hour ozone NAAQS for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area 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: September 8, 2017.

Cecil Rodrigues,
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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for "2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard" at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * 2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard.	* * * Maryland portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD 2008 ozone nonattainment area.	* * * 01/19/2017	* * * 09/25/2017, [Insert Federal Register citation].	* * * § 52.1075(q).

■ 3. Section 52.1075 is amended by adding paragraph (q) to read as follows:

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

(q) EPA approves, as a revision to the Maryland state implementation plan the

2011 base year emissions inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City marginal nonattainment area for the 2008 8-hour ozone national ambient air quality standards submitted by the Maryland Department of the Environment on January 19, 2017, as amended July 20, 2017. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of stationary point, area (nonpoint), nonroad mobile, onroad mobile, and Marine-Air-Rail (M-A-R). The inventory included actual annual emissions and typical summer day emissions for the months of May through September for the ozone precursors, VOC and NO_x.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0574; FRL-9968-15-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Removal of Clean Air Interstate Rule Trading Programs Replaced by Cross-State Air Pollution Rule Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve two state implementation plan (SIP) revisions submitted by the State of West Virginia. These revisions pertain to two West Virginia regulations that established trading programs under the Clean Air Interstate Rule (CAIR). The EPA-administered trading programs under CAIR were discontinued on December 31, 2014 upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal implementation plans (FIPs) for 23 states, including West Virginia. The submitted SIP revisions request removal of regulations that implemented the CAIR annual nitrogen oxide (NO_x) and annual sulfur dioxide (SO₂) trading programs from the West Virginia SIP (as CSAPR has supplanted CAIR). West Virginia's SIP revision submittal requesting removal of a regulation that implemented the CAIR ozone season trading program will be addressed in a separate action. EPA is

approving these SIP revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 26, 2017 without further notice, unless EPA receives adverse written comment by October 25, 2017. 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 No. EPA-R03-OAR-2016-0574 at <https://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for 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: Marilyn Powers, (215) 814-2308, or by email at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On July 13, 2016, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted three SIP revisions requesting EPA remove from its SIP three regulations that implemented the CAIR (70 FR 25162, May 12, 2005) trading programs: Regulation 45CSR39—*Control of Annual Nitrogen Oxides Emissions*, Regulation 45CSR40—*Control of Ozone Season Nitrogen Oxides Emissions*, and Regulation 45CSR41—*Control of Annual Sulfur Dioxide Emissions*. This action pertains to the two submittals that remove 45CSR39 and 45CSR41, the CAIR annual NO_x and annual SO₂

trading programs, respectively, from the West Virginia SIP. The submittal pertaining to removal of the CAIR ozone season NO_x trading program is not a part of this action and will be addressed in a separate action.

I. Background

In 2005, EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states' nonattainment and interfered with maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). CAIR required 28 states, including West Virginia, to reduce emissions of NO_x and SO₂, precursors to the formation of ambient ozone and PM_{2.5}. Under CAIR, EPA established federal implementation plans (FIPs) comprised of separate cap and trade programs for annual NO_x, ozone season NO_x, and annual SO₂. States could comply with the requirements of CAIR by remaining on the FIP, which applied only to electric generating units (EGUs), or by submitting a CAIR SIP revision that included as trading sources EGUs and certain non-EGUs¹ that formerly traded in the NO_x Budget Trading Program under the NO_x SIP Call.² West Virginia submitted, and EPA approved, a CAIR SIP revision that included EGUs and certain non-EGUs as part of the State's regulation for the CAIR ozone season trading program as well as EGUs in the CAIR annual trading program for NO_x and SO₂. See 74 FR 38536 (August 4, 2009).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,³ but ultimately remanded the rule to EPA without *vacatur* to preserve the environmental benefits provided by CAIR.⁴ The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the Court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_x annual and ozone season programs

¹ These non-EGUs are defined in the NO_x SIP Call as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr).

² In October 1998, 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_x SIP Call. See 63 FR 57356 (October 27, 1998).

³ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

⁴ *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).