

TABLE 1

Emission reduction	Emissions reduction (tons per day)	
	NO <sub>x</sub>	VOC
2008 CAA Section 185 Target .....	8.7	2.2
2008 LEV II Projection .....	17.5	2.3
LEV II emissions reduction greater than 2008 target? .....	Yes	Yes
2009 CAA Section 185 Target .....	4.5	1.4
2009 LEV II Projection .....	24.4	3.2
LEV II emissions reduction greater than 2009 target? .....	Yes	Yes

LEV II was not included as a control measure relied on in the 1-hour Ozone Attainment SIP, including Rate of Progress and RFP for the NY–NJ–CT 1-hour ozone area (67 FR 5170 (February 4, 2002)). LEV was included in the Ozone Attainment Demonstration SIP, but emissions reductions attributable to the LEV II program were not. Projected emissions reductions by control strategy provided by NYSDEC included specific reductions for each control measure including LEV II. Emissions reductions attributable to LEV II are surplus, were not previously accounted for and do not interfere with other applicable requirements concerning attainment, Rate of Progress, and RFP.

In this action, EPA is proposing that the LEV II program is an acceptable alternative program to the 185 fee program consistent with the anti-backsliding provisions of CAA Section 172(e) because it achieves greater emissions reductions than application of the 185 fee program. The principles of Section 172(e) require controls in nonattainment areas that are not less stringent than those that were applied to an area before EPA revoked the one-hour NAAQS.

**VI. What action is EPA taking?**

EPA is proposing to approve NY’s LEV II program as an alternative program to the requirements of CAA Section 185. The EPA proposes to find the LEV II program achieves sufficient reductions to fulfill the requirements of CAA Section 172(e) and 185 for the NY portion of the NY–NJ–CT 1-hour ozone nonattainment area. The LEV II program will be incorporated into the federally enforceable SIP as an alternative CAA Section 185 program if EPA finalizes this action.

**VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, 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 Clean Air Act. 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);
- 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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 7, 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 Clean Air Act; 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, the proposed rulemaking action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: November 19, 2018.

**Peter D. Lopez,**

*Regional Administrator, Region 2.*

[FR Doc. 2018–26475 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2017–0735; FRL–9987–48–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review Requirements for 2008 8-Hour Ozone Standard**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Commonwealth of Pennsylvania’s state implementation plan (SIP). The revision is in response to EPA’s February 3, 2017 Findings of

Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before January 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0735 at <http://www.regulations.gov>, or via email to [maldonado.zelma@epa.gov](mailto:maldonado.zelma@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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:** Mrs. Amy Johansen, (215) 814-2156, or by email at [johansen.amy@epa.gov](mailto:johansen.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 30, 2017, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of the Commonwealth of Pennsylvania a formal revision, requesting EPA's approval for the SIP of its NNSR Certification for the 2008 Ozone Standard and its existing Emission Statement Program. EPA is only acting on the NNSR Certification portion of the SIP revision in this action. EPA previously finalized a rulemaking action for the existing Emission Statement

Program. *See* 83 FR 26221 (June 6, 2018). This SIP revision is in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Pennsylvania is certifying that its existing NNSR program, covering the Allentown-Bethlehem-Easton, PA Nonattainment Area (which includes Carbon, Lehigh, and Northampton Counties), the Lancaster, PA Nonattainment Area (which includes Lancaster County) the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area (which includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties), Pittsburgh-Beaver Valley, PA Nonattainment Area (which includes Allegheny, Beaver, Butler, Fayette, Washington, and Westmoreland Counties) and the Reading, PA Nonattainment Area (which includes Berks County) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors.<sup>1</sup> *See* 80 FR 12264 (March 6, 2015).

**A. 2008 8-Hour Ozone NAAQS**

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area

<sup>1</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

<sup>2</sup> On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court or Court) issued an opinion on the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 2018 U.S. App. LEXIS 3636 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain provisions from the SIP Requirements Rule, including certain provisions relating to anti-backsliding, to be inconsistent with the statute and unreasonable and vacated those provisions. *Id.* The Court found other parts of the SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those provisions. *Id.*

that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Allentown-Bethlehem-Easton, PA Nonattainment Area, the Lancaster, PA Nonattainment Area, the Pittsburgh-Beaver Valley, PA Nonattainment Area, and the Reading, PA Nonattainment Area were classified as marginal nonattainment areas for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2009-2011 ambient air quality data. *See* 77 FR 30088. The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. *See* 40 CFR 51.1103.

The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Areas did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, these areas did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. *See* 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Area 8-hour ozone NAAQS attainment dates from July 20, 2015 to July 20, 2016. *Id.*<sup>3</sup> Based on

<sup>3</sup> EPA proposed approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Area and the Pittsburgh-Beaver Valley, PA Area on April 18, 2017, and August 25, 2016, respectively. These proposed actions were based on complete, certified, and quality assured ambient air quality monitoring data for the 2013-2015 monitoring period. *See* 82 FR 18268 (April 18, 2017) and 81 FR 58435 (August 25, 2016). It should be noted that a DOA does not alleviate the need for Pennsylvania to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment. EPA issued final rulemaking actions on both of these DOAs. *See* 82 FR 50814 (November 2, 2017) (Philadelphia Area)

initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Pennsylvania was required to develop a SIP revision addressing certain CAA requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.*, July 20, 2015).<sup>4</sup> See 80 FR 12264 (March 6, 2015). EPA is proposing to approve Pennsylvania's October 30, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II below.

#### B. 2017 Findings of Failure To Submit SIP for the 2008 8-Hour Ozone NAAQS

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182.<sup>5</sup> States in the ozone transport region (OTR), such as Pennsylvania, are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, such as the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone standard. See CAA section 182(a). For each higher ozone nonattainment classification, a state needs to comply with all lower

area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.<sup>6</sup> Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision addressing reasonably available control technology (RACT). See 40 CFR 51.1116. This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS.<sup>7</sup> In that case, the nonattainment requirements described previously also apply to those portions of that state.

In the March 6, 2015 SIP Requirements Rule, EPA detailed the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provided specific deadlines for SIP submittals. See 80 FR 12264.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, *inter alia*, that the Commonwealth of Pennsylvania failed to submit SIP revisions in a timely matter to satisfy NNSR requirements for its marginal nonattainment areas, specifically the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas.<sup>8</sup>

Pennsylvania submitted its October 30, 2017 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit is provided in Section II below.

## II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Pennsylvania's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.<sup>9</sup> The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. As set forth in the SIP Requirements Rule, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the July 20, 2012 effective date of area designations for the 2008 8-hour ozone standard (*i.e.*, July 20, 2015).<sup>10</sup>

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a

and 81 FR 87819 (December 6, 2016) (Pittsburgh Area).

<sup>4</sup> Neither Pennsylvania's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*.

<sup>5</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 three years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. See CAA section 181(a)(1).

<sup>6</sup> CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

<sup>7</sup> NNSR requirements continue to apply in the OTR. See CAA section 184(b).

<sup>8</sup> The EPA found that the Commonwealth of Pennsylvania also failed to submit a SIP revision for the Control Techniques Guidelines (CTG) for the volatile organic compound RACT (for all 44 CTGs). This SIP requirement will be addressed in a separate rulemaking action and will not be discussed here. See 82 FR 9158 (February 3, 2017).

<sup>9</sup> See CAA sections 172(c)(5), 173 and 182.

<sup>10</sup> With respect to states with nonattainment areas subject to a Findings of Failure to Submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Pennsylvania's SIP approved NNSR program, established in the Pennsylvania Code of Regulations (Pa. Code) Rule 25 Pa. Code Chapter 127—*Construction, Modification, Reactivation, and Operation of Sources*, applies to the construction and modification of major stationary sources in nonattainment areas. In its October 30, 2017 SIP revision, Pennsylvania certifies that the version of 25 Pa. Code Chapter 127 in the SIP is at least as stringent as the Federal NNSR requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas. EPA last approved revisions to Pennsylvania's major NNSR SIP on May 14, 2012. In that action, EPA approved revisions to Pennsylvania's SIP which made PADEP's NNSR program consistent with Federal requirements. *See* 77 FR 28261.

EPA notes that 25 Pa. Code Section 127.207(5) nor Pennsylvania's approved SIP contain a regulatory provision pertaining to establishing emissions reductions credits (ERC), as specified in 40 CFR 51.165(a)(3)(ii)(C)(2)(i) and 40 CFR 51.165(a)(3)(ii)(C)(2)(ii). However, even if Pennsylvania's regulations do not offer this emissions reductions credit option, their approved SIP is still adequate to meet the standard ERC requirements found in 40 CFR 51.165(a)(3)(ii)(C)(1), where emissions reductions must be surplus, permanent, quantifiable, and Federally enforceable, for example. Pennsylvania has the appropriate ERC requirements approved

in their regulations and their SIP, which enables them to implement the program appropriately and in accordance with Federal requirements.

Given the D.C. Cir. Court's recent ruling in *South Coast Air Quality Mgmt. Dist. v. EPA* vacating the anti-backsliding provisions of the SIP Requirements Rule, Pennsylvania remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12). In Pennsylvania, neither 25 Pa. Code Chapter 127 or the Pennsylvania SIP contain the anti-backsliding provisions found in 40 CFR 51.165(a)(12), which applied to NNSR requirements for the 1997 ozone NAAQS. However, EPA finds that 25 Pa. Code and Pennsylvania's SIP presently include appropriate thresholds for major stationary sources and emissions offset ratios for the worst air quality designations these nonattainment areas have been designated. For example, in 25 Pa. Code Section 121.1, a source is considered a "major NO<sub>x</sub> emitting facility" if it emits 25 tons per year of NO<sub>x</sub> in Bucks, Chester, Delaware, Montgomery or Philadelphia County (the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area). This emissions threshold is equivalent to an area that was designated as severe nonattainment for the ozone NAAQS and is therefore more stringent. In addition, the entire state of Pennsylvania is located in the OTR and any source in the OTR is considered major for NO<sub>x</sub> and VOC if it emits or has the potential to emit at least 100 tons per year or 50 tons per year, respectively. This requirement can be found in 25 Pa. Code Section 127.201(c), as well as Pennsylvania's approved SIP and is equivalent to the higher moderate nonattainment area classification. Additionally, emissions offset ratios for sources located in Pennsylvania are more stringent than the requirements of 40 CFR 51.165(a)(9)(i). 25 Pa. Code Section 127.210 and the approved Pennsylvania SIP require sources in a marginal nonattainment area to offset their NO<sub>x</sub> and VOC emissions at a ratio of 1.15 to 1 versus the Federal NNSR requirement for a source located in a marginal nonattainment area to offset NO<sub>x</sub> and VOC at a less stringent ratio of 1.1 to 1. *See* 40 CFR 51.165(a)(9)(i)(A). Therefore, EPA finds that Pennsylvania's regulations and approved SIP are more stringent than EPA's NNSR anti-backsliding requirements and their program is adequate to implement NNSR for the 2008 ozone NAAQS.

The version of 25 Pa. Code Chapter 127 that is contained in the current SIP has not changed since the 2012

rulemaking where EPA last approved Pennsylvania's NNSR provisions, with respect to ozone and its precursors.<sup>11</sup> This version of the rule covers the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS found in 40 CFR 51.165, the Phase 2 Rule and the SIP Requirements Rule.

### III. Proposed Action

EPA is proposing to approve Pennsylvania's October 30, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas. EPA has concluded that the Commonwealth's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. *See* 82 FR 9158. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory

<sup>11</sup> Subsequently, EPA did approve an update to Pennsylvania's SIP incorporating preconstruction permitting requirements for fine particulate matter (PM<sub>2.5</sub>) into their NNSR regulations on July 13, 2012. *See* 77 FR 41276.

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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 7, 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, approving Pennsylvania's 2008 8-hour ozone NAAQS Certification SIP revision for NNSR does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 26, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2018–26479 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405 and 423

[CMS–4174–CN]

RIN 0938–AT62

#### Medicare Program: Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures, Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects technical and typographical errors in the proposed rule that appeared in the **Federal Register** on October 2, 2018 entitled “Medicare Program: Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures.”

**FOR FURTHER INFORMATION CONTACT:**

Joella Roland, (410) 786–7638.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In FR Doc. 2018–21223 of October 2, 2018 (83 FR 49513), there were technical and typographical errors that are identified and corrected in the Correction of Errors section of this document.

#### II. Summary of Errors

On page 49513, we inadvertently made a typographical error in the alphanumeric portion of the regulation identification number (RIN).

On page 49523, in our discussion of the “Notice of a Remand,” we inadvertently referenced an incorrect subsection of the regulation. In noting the corresponding change to part 423, subpart U, we erroneously referenced § 423.2056(d)(1) instead of § 423.2056(f).

On page 49525, in the “Regulatory Impact Statement,” although our calculation of the total amount of time that would be saved by not requiring appellants to sign appeals was correct, we made an inadvertent typographical error in the formula used to calculate this amount. Instead of referencing .083 hours, we incorrectly listed .0083 hours in the formula.

#### III. Correction of Errors

In FR Doc. 2018–21223 of October 2, 2018 (83 FR 49513), make the following corrections:

1. On page 49513, second column, line 5, the alphanumeric term “AT27” is corrected to read “AT62” in the RIN.

2. On page 49523, first column, first full paragraph, last line 23, the reference “§ 423.2056(d)(1)” is corrected to read “§ 423.2056(f)”.

3. On page 49525, first column, first partial paragraph, line 2, the figure “.0083” is corrected to read “.083”.

Dated: November 29, 2018.

**Ann C. Agnew,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2018–26497 Filed 12–4–18; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R2–ES–2017–0014; 4500090023]

RIN 1018–BD53

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Sonoyta Mud Turtle

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 12.28 acres (4.97 hectares) in Pima County, Arizona, located entirely within Organ Pipe Cactus National Monument, fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies' critical habitat. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Sonoyta mud turtle.

**DATES:** We will accept comments on the proposed rule or draft economic analysis that are received or postmarked on or before February 4, 2019.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 22, 2019.

**ADDRESSES:** *Written comments:* You may submit comments on the proposed rule