

Act of 1995 (at 44 U.S.C. 3507(d)), VA will submit this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

#### **List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Veterans.

#### *Signing Authority*

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 10, 2019, for publication.

Dated: April 12, 2019.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as set forth below:

### **PART 3—ADJUDICATION**

#### **Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

- 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

- 2. Amend § 3.103 by revising paragraph (b)(3)(v) and adding a cross references paragraph to the end of the section to read as follows:

#### **§ 3.103 Procedural due process and other rights.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(v) An adverse action based upon a written or electronic statement provided to VA by a veteran, or, in the case of compensation, written or electronic notice from the Department of Defense, which indicates that the veteran has received, is in receipt of, or will receive active service pay as defined by § 3.654(a). The statement from the veteran or notice from the Department of Defense must include the date on which the service resulting in receipt of active service pay began or is expected to begin or, in the case of training duty, the number of training days performed during a specified period of time (e.g., last month, last quarter, last year, etc.). In order for this paragraph to apply, the veteran must have received prior notice that receipt of active service pay precludes concurrent receipt of VA benefits or VA must have received a statement from the veteran which indicates knowledge of such preclusion. When notice provided by the Department of Defense contains information indicating that the monthly level of disability compensation for a veteran exceeds the veteran's monthly active service pay rate, the exception contained in this paragraph will only apply to a written or electronic notice provided to VA by the veteran.

\* \* \* \* \*  
CROSS REFERENCES: Submission of statements or information affecting entitlement to benefits. See § 3.217(a). Active Service Pay. See § 3.654. General. See § 3.700(a)(1).

- 3. Amend § 3.654 by revising paragraphs (b) and (c) and adding an authority citation to the end of the section to read as follows:

#### **§ 3.654 Active service pay.**

\* \* \* \* \*

(b) *Active duty or active duty for training.* (1) Where the veteran receives active service pay as a result of returning to active duty status or active duty for training as described in § 3.6(c), with the exception of annual active duty for training typically performed 15 days each year by reservists and members of the National Guard and Active Duty for Special Work to receive training (see paragraph (c) of this section), the award will be discontinued effective the day preceding reentrance into active duty or active duty for training status. If the exact date is not known, payments will be discontinued effective date of last payment, and the effective date of discontinuance will be adjusted to the day preceding reentrance when the date of reentrance has been ascertained from the service department.

(2) Payments, if otherwise in order, will be resumed effective the day

following release from active duty or active duty for training if claim for recommencement of payments is received within 1 year from the date of such release; otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim. Prior determinations of service connection will not be disturbed except as provided in § 3.105. Compensation will be authorized based on the degree of disability found to exist at the time the award is resumed. Disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. If a disability is incurred or aggravated in the second period of service, compensation for that disability cannot be paid unless a claim therefor is filed.

(c) *Training duty.* Prospective adjustment of awards may be made where the veteran waives his or her Department of Veterans Affairs benefit covering anticipated receipt of active service pay because of expected periods of active duty for training (annual active duty for training typically performed 15 days each year by reservists and members of the National Guard or Active Duty for Special Work to receive training) or inactive duty training. Where readjustment is in order because service pay was not received for expected training duty, retroactive payments may be authorized if a claim for readjustment is received within 1 year after the end of the fiscal year for which payments were waived.

(Authority: 38 U.S.C. 501(a) and 5304(c))

[FR Doc. 2019-07751 Filed 4-18-19; 8:45 am]

BILLING CODE 8320-01-P

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[EPA-R03-OAR-2019-0010; FRL-9992-44-Region 3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Delaware; 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 Delaware's state implementation plan (SIP). The SIP 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 May 20, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0010 at <https://www.regulations.gov>, or via email to [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Amy Johansen, Office of Permits and State Programs (3AP10), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)814-2156. Ms. Johansen can also be reached via electronic mail at [johansen.amy@epa.gov](mailto:johansen.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 29, 2018, the Department of Natural Resources and Environmental Control (DNREC) submitted on behalf of the state of Delaware a formal SIP revision, requesting EPA's approval of its NNSR Certification for the 2008 8-hour ozone NAAQS. 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, Delaware is certifying that its existing NNSR program, covering the Delaware portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Philadelphia Area) nonattainment area (which includes New Castle County) and the entire Seaford, DE (Seaford Area) nonattainment area (which includes Sussex 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 2</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 concentration 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 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 Seaford and Philadelphia Areas were classified as marginal nonattainment 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

<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. February 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 or 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.*

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 Seaford Area attained the 2008 8-hour ozone NAAQS by July 20, 2015 and the EPA Administrator signed a final Determination of Attainment (DOA) on April 11, 2016. *See* 81 FR 26697 (May 4, 2016). The Philadelphia Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, the area did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. *Id.* Therefore, in same rulemaking action, the EPA Administrator signed a final rule extending the Philadelphia Area 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016. *Id.*<sup>3</sup>

Based on initial nonattainment designations for the 2008 8-hour ozone NAAQS, as well as the March 6, 2015 final SIP Requirements Rule, Delaware was required to develop a SIP revision addressing certain CAA requirements for the Seaford and Philadelphia Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of the areas 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 Delaware's June 29, 2018 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 of this rulemaking action.

**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

<sup>3</sup> On November 2, 2017, EPA approved a DOA for the 2008 8-hour ozone NAAQS for Philadelphia Area. This action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 82 FR 50814. It should be noted that a DOA does not alleviate the need for Delaware 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.

<sup>4</sup> Neither Delaware'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*.

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 Delaware, 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 Seaford and Philadelphia 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).<sup>6</sup> 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>7</sup> Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision addressing reasonable 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>8</sup> In that case, the nonattainment requirements described previously also apply to those portions of that state (Delaware in this case). 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. 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 EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, *inter alia*, that Delaware failed to submit SIP revisions in a timely manner to satisfy NNSR requirements for the Seaford and Philadelphia Areas. Delaware submitted its June 29, 2018 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 of this rulemaking action.

## II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Delaware'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 through 51.165. 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 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).

Delaware's SIP approved NNSR program, established in Title 7 Delaware Administrative Code (DE Admin Code) 1125 (*Requirements for Preconstruction Review*), apply to the construction and modification of major stationary sources in nonattainment areas. In its June 29, 2018 SIP revision, Delaware certifies that the version of Title 7 DE Admin Code Section 1125 approved in the SIP is at least as stringent as the Federal NNSR requirements for the Seaford and Philadelphia Areas. EPA last approved revisions to Delaware's NNSR SIP on February 28, 2013. *See* 78 FR 13496. In that action, EPA approved revisions to Delaware's SIP which made DNREC's

<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> EPA approved Delaware's 2011 base year inventories for both the Seaford and Philadelphia Areas (specifically, Sussex and New Castle County, Delaware). *See* 80 FR 59052 (October 1, 2015). Delaware also submitted their emissions statements certification to EPA for approval on June 29, 2018. EPA is addressing the emissions statements certification in a separate rulemaking action.

<sup>7</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. While not the subject of this action, EPA approved Delaware's OTR RACT SIP. *See* 82 FR 57849 (December 8, 2017).

<sup>8</sup> NNSR requirements continue to apply in the OTR. *See* CAA section 184(b).

<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.

NNSR program consistent with Federal requirements. *Id.* EPA notes that neither 7 DE Admin Code 1125 nor Delaware's approved SIP have the regulatory provision for any emissions change of VOC in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Delaware has never had an area designated extreme nonattainment for any of the ozone NAAQS. Therefore, the Delaware SIP is not required to have this requirement for VOC in extreme nonattainment areas until such time as Delaware has an extreme ozone nonattainment area.

As for consistency with 40 CFR 51.165(a)(3)(ii)(C)(1), Delaware's approved SIP contains appropriate regulatory provisions establishing emissions reduction credits (ERC) that are permanent, quantifiable, and Federally enforceable.<sup>11</sup> See 7 DE Admin Code 1125 Section 2.5.1. However, neither 7 DE Admin Code 1125 nor Delaware's approved SIP contain a regulatory provision pertaining to establishing 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). Nonetheless, even if Delaware's regulations do not offer these specific emissions reductions credit options, as stated previously, 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. See 7 DE Admin Code 1125, Section 2.5.1. Delaware has the appropriate ERC requirements approved in 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, Delaware remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12). In Delaware, neither 7 DE Admin Code 1125 nor the Delaware SIP contain the anti-backsliding language found in 40 CFR 51.165(a)(12), which applied to NNSR requirements for the 1997 ozone NAAQS. However, EPA finds that 7 DE Admin Code 1125 and Delaware's SIP presently include all required major stationary source

thresholds and emissions offset ratios for NSR purposes.

The entire state of Delaware is located within 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. See CAA section 184(b). This major stationary source threshold requirement is specified in 7 DE Admin Code 1125, Sections 1.9 and 2.2.2.1, as well as Delaware's approved SIP, and is equivalent to the requirements which would be applicable to major stationary sources in a moderate nonattainment area. On April 30, 2004, the Philadelphia Area, which included New Castle, Kent, and Sussex Counties, was designated as moderate nonattainment for the 1997 8-hour ozone NAAQS. See 69 FR 23951 and 40 CFR 81.308.

Additionally, in Delaware, the term "significant" when used in reference to a source's emission rates for NO<sub>x</sub> and VOC are lower than the typical emissions rate for an area that is moderate nonattainment. For example, in 7 DE Admin Code 1125 Section 1.9, an emissions increase is considered "significant" if it equals or exceeds 25 tons per year of NO<sub>x</sub> or VOC in New Castle or Kent Counties, which is based on the severe area designation those counties had for the prior 1-hour ozone NAAQS and 40 tons per year of NO<sub>x</sub> or VOC in Sussex County.<sup>12</sup> Therefore, EPA finds that Delaware's regulations and approved SIP are more stringent than EPA's NNSR anti-backsliding requirements and its program is adequate to implement NNSR for the 2008 ozone NAAQS. Delaware's major stationary source threshold and offset provisions in 7 DE Admin Code 1125 remain in its Federally-approved SIP unless and until EPA approves a full NAAQS redesignation request from Delaware in accordance with CAA section 107. Thus, EPA finds that Delaware's SIP includes relevant and required anti-backsliding requirements. EPA expects that DNREC will continue to implement its NNSR program consistent with its approved SIP for major stationary source thresholds and emission offset ratios.

The version of 7 DE Admin Code 1125 that is contained in the current SIP has not changed, with respect to NNSR since the 2013 rulemaking where EPA last approved Delaware's NNSR provisions. This version of the SIP

approved rule covers the Seaford and Philadelphia 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 Delaware's June 29, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Seaford and Philadelphia Areas. EPA has concluded Delaware'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 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

<sup>11</sup> On October 20, 2016, EPA disapproved a proposed SIP revision that sought to include additional ERC provisions, adopted by Delaware on December 11, 2016, into the Delaware SIP, specifically, 7 DE Admin Code 1125 Sections 2.5.5 and 2.5.6. See 81 FR 72529. Since EPA disapproved these provisions, the previously approved provisions that EPA approved into Delaware's SIP on October 2, 2012 remain applicable Federal requirements. See 77 FR 60053.

<sup>12</sup> As identified previously in Section I.A. in this rulemaking, the Seaford and Philadelphia Areas are classified as marginal nonattainment for the 2008 8-hour ozone NAAQS, a classification imposes less stringent requirements than an area classified as moderate nonattainment.

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, approving Delaware'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: April 4, 2019.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2019-07714 Filed 4-18-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 174 and 180

[EPA-HQ-OPP-2019-0041; FRL-9991-14]

#### Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the

establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before May 20, 2019.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Michael Goodis, Registration Division (7505P), main telephone number: (703) 305-7090, email address:

[RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov); or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).

- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

#### B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

#### II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of