

Nonattainment New Source Review Clean Air Act Requirements for the 2015 Ozone NAAQS

The Clean Air Act requires all ozone nonattainment areas to have a program that implements nonattainment new source review. The requirements for the program are contained in 40 CFR 51.165. The nonattainment new source review requirements for the 70 parts per billion (ppb) 8-hour ozone standard are described in *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements* (83 FR 62998, December 6, 2018). If a nonattainment area has a previously approved nonattainment new source review rule in force for a previous 8-hour or 1-hour ozone standard covering all portions of the nonattainment area for the 2015 8-hour ozone standard, the existing rule may be sufficient to meet the nonattainment new source review requirements for the 2015 ozone standard.

District Rule 214, FEDERAL NEW SOURCE REVIEW, and District Rule 217, PUBLIC NOTICE REQUIREMENTS FOR PERMITS, fulfill the nonattainment new source review requirements of 40 CFR 51.165. Both Rule 214 and Rule 217 were last revised on August 23, 2012, submitted to U.S. EPA on September 26, 2012, and approved by U.S. EPA into the SIP on February 14, 2013¹. The boundaries of the Sacramento Federal Ozone Nonattainment Area (SFNA) for the 2015 8-hour ozone standard are the same as for the 1997 standard of 80 ppb standard and the 2008 standard of 75 ppb. Staff has reviewed existing Rules 214 and 217 and, based on the rationale in Table 1 below, determined that the existing rules are adequate to meet the nonattainment new source review (NNSR) requirements of 40 CFR 51.165 for the 2015 8-hour ozone standard.

The Sacramento Metropolitan Air Quality Management District is certifying that our existing NNSR program, covering the Sacramento County portion of the Sacramento Federal Ozone Nonattainment Area for the 2015 ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements* (83 FR 62998, December 6, 2018).

¹ 78 FR 10554.

Table 1 – Clean Air Act Requirements Contained in Rule 214, Federal New Source Review and Rule 217, Public Notice Requirements for Permits

40 CFR 51.165 Requirements	District Rules 214 and 217 Provisions
<p>(a)(1)(iv)(A)(1)(i)–(iv) and (2)(iv): Major stationary source thresholds for serious ozone nonattainment area – 50 tons per year (tpy) of volatile organic compounds (VOC) and 50 tpy of oxides of nitrogen (NOx)</p>	<p><u>Rule 214, Section 228</u> A stationary source is a major stationary source if it emits or has the potential to emit 25 tpy or more of either NOx or VOC.</p> <p>These thresholds are equivalent to or more stringent than the federal major stationary source thresholds for a severe ozone nonattainment area as required by the District’s 2008 Ozone NAAQS nonattainment designation and will be maintained due to anti-backsliding requirements.</p>
<p>(a)(1)(iv)(A)(3): Any physical change at a stationary source is major if that change would constitute a major stationary source by itself</p>	<p><u>Rule 214, Section 228</u> Section 228 defines a major stationary source as a stationary source that emits or has the potential to emit a regulated air pollutant in quantities equal to or exceeding 25 tpy of either VOC or NOx.</p> <p><u>Rule 214, Section 227</u> Section 227 defines a major modification as any physical change, change in method of operation, or addition, to a stationary source classified as a major stationary source which results in an emission increase for a project equal to or exceeding 25 tpy of VOC or NOx. The major modification thresholds are identical to the major stationary source thresholds for VOC and NOx. Therefore, any modification is a major modification if it would constitute a major stationary source by itself.</p>
<p>(a)(1)(v)(E): Significant net emissions increase of NOx is significant for ozone</p>	<p><u>Rule 214, Section 239</u> Section 239 defines both VOC and NOx as precursors to Photochemical Oxidants (Ozone). All NSR requirements for NOx are applicable to ozone.</p>
<p>(a)(1)(v)(F): Any emissions change of VOC in an extreme area triggers NNSR</p>	<p>Not applicable because the District is not located in an extreme nonattainment area.</p>

40 CFR 51.165 Requirements	District Rules 214 and 217 Provisions
<p>(a)(1)(x)(A)-(C) and (E): Significant emissions rates for VOC and NOx as ozone precursors</p>	<p><u>Rule 214, Section 239</u> Section 239 defines both VOC and NOx as precursors to Photochemical oxidants (Ozone).</p> <p><u>Rule 214, Section 227</u> Section 227 sets the significant emission rates for both VOC and NOx as equal to or exceeding 25 tpy of either pollutant.</p>
<p>(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits</p> <p>(a)(3)(ii)(C)(1)(i): Emissions reductions are surplus, permanent, quantifiable, and federally enforceable.</p> <p>(a)(3)(ii)(C)(1)(ii): The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.</p> <p>(a)(3)(ii)(C)(2): If requirements of (a)(3)(ii)(C)(1)(ii) are not met, then emission reductions achieved may only be credited if: (i) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or (ii) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraph (a)(3)(ii)(C)(1)(i) of this section.</p>	<p><u>Rule 214, Section 302.4</u> Section 302.4 requires emission offsets be obtained pursuant to District Rules 204, 205, or 206. Rules 204 and 205 were last submitted to EPA on December 19, 1997. Rule 206 was last submitted to EPA on March 10, 1998.</p> <p><u>Rule 204, Section 201; and Rule 206, Section 201</u> Rule 204, Sections 201.1 and 201.2, and Rule 206, Section 201, define actual emissions reductions as real, enforceable, quantifiable, permanent, and surplus. Rule 204, Section 201.4 requires all crediting and disbursement of emission reductions to be in accordance with the most current EPA emissions trading policy and applicable federal regulations.</p> <p><u>Rule 204, Section 301</u> Section 301 only allows actual emission reductions to be certified as emission reduction credits.</p> <p>The District's attainment plan for the 2015 8-hour Ozone Standard includes a sufficient portion of pre-baseline ERCs explicitly included in the emission inventory used for the plan.</p> <p>The requirements of (a)(3)(ii)(C)(2) are not applicable because the District meets the requirements of (a)(3)(ii)(C)(1)(ii) as demonstrated above.</p> <p><u>Rule 205, Section 301</u> Section 301 provides for a community bank and priority reserve bank that is comprised of actual emission reductions as defined and certified pursuant to Rule 204.</p>

40 CFR 51.165 Requirements	District Rules 214 and 217 Provisions
	<p><u>Rule 206, Section 301</u> Section 301 requires that mobile source emission reduction credits may be obtained for actual emission reductions that are certified pursuant to the requirements of Rule 204.</p> <p><u>Rule 204, Section 112</u> Section 112 does not allow emission reduction credits from shutdowns or curtailments that occurred before 1/1/88.</p>
<p>(a)(8): Requirements for VOC apply to NOx as ozone precursors</p>	<p><u>Rule 214, Section 239</u> Section 239 defines both VOC and NOx as precursors to photochemical oxidants (ozone). All NSR requirements for VOC and NOx are applicable to ozone.</p> <p>All NSR requirements in Rule 214 (e.g. major stationary source thresholds, major modification thresholds, and offset ratios) are equivalent for VOC and NOx; thus, all requirements for NOx are the same as the requirements for VOC.</p>
<p>(a)(9)(ii)-(iv)²: Offset ratios for VOC and NOx for ozone nonattainment areas</p> <p>(a)(9)(iii) and (iv):</p>	<p><u>Rule 214, Section 303 through 303.1</u> Section 303 provides the offset ratios for ERCs, obtained pursuant to Rule 204, for offset purposes, which are equal to or greater than 1:1 for nonattainment pollutants. Distance ratios for VOC or NOx are at least 1.3:1 for all new major stationary sources or major modifications.</p> <p><u>Rule 214, Section 303.2</u> Section 303.2 provides the offset ratios for ERC loans, obtained pursuant to Rules 205 and 206, which are equal to or greater than 1:1 for nonattainment pollutants. Distance ratios for VOC or NOx are at least 1.3:1 for all new major stationary sources or major modifications.</p> <p>The ratios in Sections 303 through 303.2 are equivalent to the ratios in paragraph (a)(9)(ii)(D) for a severe ozone nonattainment area as was required by the District's 2008 Ozone NAAQS</p>

² Subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv) when the U.S. EPA added new subparagraph (a)(9)(i) under the 2008 PM2.5 Implementation Rule.

40 CFR 51.165 Requirements	District Rules 214 and 217 Provisions
	<p>nonattainment designation and will be maintained due to anti-backsliding requirements.</p> <p>(a)(9)(iii) and (iv): These paragraphs are not applicable since the District is a serious ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the federal CAA.</p>
(a)(12): Anti-backsliding provision(s), where applicable	<p>The Sac Metro Air District is in a nonattainment area classified as severe for the 1997 ozone NAAQS and serious for the 2008 ozone NAAQS. Rule 214 continues to implement the NNSR program at the major stationary source thresholds and offset requirements for a severe-15 ozone nonattainment area, including revoked ozone standards, and therefore demonstrates compliance with the anti-backsliding requirements.</p>
(i): Public participation requirements	<p><u>Rule 214, Section 102</u> All sources subject to Rule 214 are also subject to Rule 217, PUBLIC NOTICE REQUIREMENTS FOR PERMITS.</p> <p><u>Rule 217, Section 401.2</u> Requires publication of notice in at least one newspaper of general circulation that includes information on how to obtain pertinent information and inviting public comment.</p>
<p>No longer allowed due to court decision in <i>Sierra Club v. EPA</i>, Case No. 15-1465, U.S. Court of Appeals for the D.C. Circuit: (a)(11) – Allows use of interpollutant trading for ozone precursors</p>	<p><u>Rule 214, Section 304</u> Section 304 discourages use of interpollutant offsets and requires any use of interpollutant offsets to receive written approval by EPA. The court decision in <i>Sierra Club v. EPA</i>, Case No. 15-1465, prevents EPA from granting approval; therefore, Rule 214 does not allow interpollutant offsets.</p>