



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2012-0381; FRL- 9735-7]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Delaware; Requirements for Prevention of Significant Deterioration and Nonattainment  
New Source Review; Fine Particulate Matter (PM<sub>2.5</sub>)**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on March 14, 2012. This SIP revision pertaining to Delaware's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs incorporates preconstruction permitting requirements for fine particulate matter (PM<sub>2.5</sub>) into the Delaware SIP. In addition, EPA is approving SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 national ambient air quality standards (NAAQS) for PM<sub>2.5</sub> and ozone, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 lead NAAQS. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0381. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Gerallyn Duke, (215) 814-2084, or by e-mail at [duke.gerallyn@epa.gov](mailto:duke.gerallyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On August 1, 2012 (77 FR 45527), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of a SIP revision pertaining to Delaware’s Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs which incorporates preconstruction permitting requirements for fine particulate matter (PM<sub>2.5</sub>) into the Delaware SIP. In addition, EPA proposed approval of SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 PM<sub>2.5</sub> and ozone NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 lead NAAQS. The formal SIP

revision was submitted by Delaware on March 14, 2012.

The purpose of this SIP revision is to incorporate the PSD and nonattainment preconstruction permitting requirements for PM<sub>2.5</sub> that are set forth in two Federal rules. The first is the “Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers (PM<sub>2.5</sub>)” (NSR PM<sub>2.5</sub> Rule), which was promulgated on May 16, 2008 (73 FR 28321). The second is the “Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM<sub>2.5</sub>) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (PSD PM<sub>2.5</sub> Rule), which was promulgated on October 20, 2010 (75 FR 64864).

## **II. Summary of SIP Revision**

The SIP revision consists of amendments to sections 1.0, 2.0, and 3.0 of 7 DE Admin. Code 1125, “Requirements for Preconstruction Review.” The amendments establish the major source threshold, significant emission rate and offset ratios for PM<sub>2.5</sub>, establish NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>, and establish the allowance for interpollutant trading for offsets and NSR applicability to PM<sub>2.5</sub> precursor pollutants, pursuant to the May 2008 NSR PM<sub>2.5</sub> Rule. In addition, the amendments add maximum allowable ambient pollutant concentrations (increments), an SMC for PM<sub>2.5</sub> pursuant to the October 2010 PSD PM<sub>2.5</sub> Rule, and SILs. As discussed in the NPR, we do not consider the SILs to be a mandatory SIP element, and in light of litigation before the U.S. Court of Appeals (D.C. Circuit), we are taking no action at this time with regard to new section 3.9 of DE Admin. Code 1125, “Source Impact Analysis.”

Other specific requirements of the regulations and the rationale for EPA’s proposed action are

explained in the NPR and will not be restated here. No public comments were received on the NPR.

### **III. Final Action**

EPA is approving the March 14, 2012 SIP submission pertaining to Delaware's PSD and nonattainment NSR programs to incorporate the preconstruction permitting requirements for PM<sub>2.5</sub> as a revision to the Delaware SIP, with the exception for the portion of the SIP submission concerning the implementation of SILs for PM<sub>2.5</sub>. Additionally, in light of this SIP revision, EPA is approving the portions of Delaware's December 13, 2007, March 12, 2008, September 19, 2008, September 16, 2009, and April 1, 2010 infrastructure SIP submittals which address the obligations set forth at CAA section 110(a)(2)(D)(i)(II) relating to Delaware's PSD permit program for the 1997 PM<sub>2.5</sub> and ozone NAAQS as well as for the 2006 PM<sub>2.5</sub> NAAQS. Finally, in light of Delaware's submission dated October 17, 2011 and the March 2012 SIP revision which address the obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the Delaware's PSD permit program, EPA has determined that Delaware's SIP meets the statutory obligations relating to its PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 2008 lead NAAQS.

### **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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 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 [Insert date 60 days from date of publication of this document in the Federal Register]. 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. This action pertaining to NSR requirements for PM<sub>2.5</sub> 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2012.

W. C. Early,  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (c) is amended by revising the entries for Regulation 1125, sections 1.0, 2.0, and 3.0 in numerical order, to read as follows:

§ 52.420                      Identification of plan.

\*                      \*                      \*                      \*                      \*

(c) \* \* \*

EPA-Approved Regulations in the Delaware SIP

<b>State regulation (7 DNREC 1100)</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
*                      *	*                      *	*                      *	*                      *	*                      *
<b>1125</b>	<b>Requirements for Preconstruction Review</b>			
Section 1.0	General Provisions	2/11/12	[Insert Federal Register publication date] [Insert page number where the document begins]	Added 4 terms, Revised 5 terms. <b>Note:</b> In section 1.9, the previous SIP-approved baseline dates for sulfur dioxide, particulate matter, and nitrogen dioxide in the definition of “Baseline Date” remain part of the SIP.
Section 2.0	Emission Offset Provisions (EOP)	2/11/12	[Insert Federal Register publication date] [Insert page number where	Added Section 2.2.5, 2.4.3.3 and 2.5.7

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>the document begins]</u>	
Section 3.0	Prevention of Significant Deterioration of Air Quality	2/11/12	[ <u>Insert Federal Register publication date]</u> [ <u>Insert page number where the document begins]</u>	Revised Section 3.2 and 3.7.7.1. <b>Note:</b> Previous SIP-approved revisions to Section 3.1 for nitrogen dioxide increments and Section 3.9A (now designated as Section 3.10.1) for air quality models remain part of the SIP.
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[FR Doc. 2012-24095 Filed 10/01/2012 at 8:45 am; Publication Date: 10/02/2012]