



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0152; FRL-9967-99-Region 3]

**Air Plan Approval; Delaware; Infrastructure Requirements for the
2012 Fine Particulate Matter Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a state implementation plan (SIP) revision submittal from the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Delaware made a SIP submittal to address the infrastructure requirements for the 2012 fine particulate matter (PM_{2.5}) NAAQS. This action approves portions of this submittal pursuant to section 110 of the CAA. EPA is not taking any action on the portion of the submittal that addresses interstate transport of emissions and intends to take separate action later.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0152. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814-2042, or by e-mail at huang.gavin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2017 (82 FR 25211), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of portions of Delaware’s December 14, 2015 SIP revision which address for the 2012 PM_{2.5} NAAQS the following infrastructure elements of section 110(a)(2) of the CAA: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA will take separate action, at a future date, on the remaining portion of the December 14, 2015 SIP revision that addresses requirements in section 110(a)(2)(D)(i)(I) (interstate transport of emissions) for the 2012 PM_{2.5} NAAQS. Additionally, the proposed rulemaking action did not include action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA,

and will be addressed in a separate process if necessary.

Because the technical support document (TSD) was erroneously omitted from the docket for this rulemaking at the time EPA published the NPR on June 1, 2017 (82 FR 25211), EPA published a supplemental notice of proposed rulemaking (SNPR) extending the comment period on June 22, 2017 to allow further opportunity for public comment on our proposed approval of portions of Delaware's December 14, 2015 SIP revision addressing infrastructure requirements for the 2012 PM_{2.5} NAAQS. 82 FR 28432.

II. Summary of SIP Revision and EPA Analysis

EPA reviewed the December 14, 2015 SIP submittal from Delaware and determined that it addressed for the 2012 PM_{2.5} NAAQS the following infrastructure elements in section 110(a)(2): (A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. A detailed summary of EPA's review and rationale for approving Delaware's submittal may be found in the TSD for this rulemaking action, which is available on line at <http://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2017-0152.

Although Delaware's December 14, 2015 SIP submission also contained provisions to address section 110(a)(2)(D)(i)(I) of the CAA, EPA did not propose any action on the portion of the submittal pertaining to section 110(a)(2)(D)(i)(I) regarding the interstate transport of emissions. EPA intends to take later separate action on this portion of Delaware's submittal.

Other specific requirements of Delaware's submittal for the 2012 PM_{2.5} NAAQS infrastructure requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received one comment which is addressed below.

III. Public Comment and EPA's Response

EPA received a comment in response to the June 1, 2017 NPR. The commenter noted that the TSD was not available online and requested a restart of the comment period. Additionally, the commenter expressed support for EPA and concerns about the removal of environmental regulations.

Response: On June 22, 2017, EPA made the TSD available online at <http://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2017-0152. In our June 22, 2017 SNPR, EPA subsequently extended the comment period. 82 FR 28432. While EPA appreciates the supportive comments and expression of concern for environmental regulations in general, these comments are not germane to this rulemaking and do not identify any specific actions or provisions that EPA should address differently. Therefore, EPA does not provide further response.

IV. Final Action

EPA is approving portions of Delaware's December 14, 2015 SIP revision that address the following elements of section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Delaware's SIP revision addressing section 110(a)(2)(A-C), (D)(i)(II) and (D)(ii), (E-H), and (J-M) provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 PM_{2.5} NAAQS. EPA will take later separate action on the portion of the SIP revision addressing section 110(a)(2)(D)(i)(I) (interstate transport of emissions) for the 2012 PM_{2.5} NAAQS. This final rulemaking action does not include action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment planning requirements of part D, title I of the

CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process if necessary.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 after date of publication 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 to approve portions of Delaware’s December 14, 2015 SIP revision for section 110(a)(2) infrastructure requirements for the 2012 PM_{2.5} NAAQS 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, Particulate matter, Reporting and recordkeeping requirements

Dated: September 8, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS” after the entry “Infrastructure element 110(a)(2)(D)(i)(I) related to interstate transport.” The added text reads as follows:

§ 52.420 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Section 110(a)(2) Infrastructure Requirements for the 2012 PM _{2.5} NAAQS	Statewide	12/14/2015	[Insert date of Federal Register publication], [Insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
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[FR Doc. 2017-20163 Filed: 9/21/2017 8:45 am; Publication Date: 9/22/2017]