



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0663; FRL-10005-15-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Delaware;
Infrastructure Requirements for the 2015 Ozone Standard and Revisions to Modeling
Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing rulemaking action on two state implementation plan (SIP) revisions submitted by the State of Delaware. Whenever EPA promulgates a new or revised National Ambient Air Quality Standard (NAAQS), states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet the requirements of the new or revised NAAQS, or to add any needed provisions necessary to meet the revised NAAQS. The SIP revision 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 has made a submittal addressing the infrastructure requirements for the 2015 ozone NAAQS and EPA is proposing to approve Delaware's SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of Clean Air Act (CAA) section 110(a). EPA is also approving a second submittal from Delaware which updates a reference to the current version of EPA's modeling guidance.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0663 at <https://www.regulations.gov>, or via email to spielberger.susan@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://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2021. Mr. Schulingkamp can also be reached via electronic mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: On October 26, 2015, EPA revised both the primary and secondary NAAQS for ozone based on 8-hour average concentrations to 0.070 parts per million (ppm). *See* 80 FR 65292.

I. Delaware's Submissions

On October 11, 2018, the Delaware Department of Natural Resources (DNREC) submitted a revision to its SIP to satisfy the requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS. This submittal addressed the following elements of CAA section 110(a)(2): (A), (B), (C), (D)(i)(I), (D)(i)(II), (E), (F), (G), (H), (J), (K), (L), and (M). On November 4, 2019, DNREC submitted a letter identifying outdated references in its October 11, 2018 submission and committing to submit a future SIP revision in order to address the deficiency. With this letter, Delaware requested EPA conditionally approve the State's submission with respect to CAA section 110(a)(2)(K) based on the commitment to submit a future SIP revision.

On December 16, 2019, DNREC submitted a revision to its SIP to amend Title 7 of the Delaware Administrative Code (DE Admin. Code), Regulation 1125, *Requirements for Preconstruction Review*. This submittal is intended to meet the commitment described in the state's November 4, 2019 letter as previously described. This submittal revises a section of Regulation 1125 to incorporate by reference the most recent revision to EPA's Guideline on Air Quality Models into state regulation. Specifically, the revision changes Delaware's regulation that references the "Guideline on Air Quality Models" as published by EPA's Office of Air Quality Planning and Standards in July 1986 and supplemented in July 1987 to the "Guideline on Air Quality Models (40 CFR part 51, appendix W, July 1, 2019 ed.)." Because Delaware has submitted the intended SIP revision outlined in the State's November 4, 2019 letter, EPA is considering CAA section 110(a)(2)(K) of Delaware's October 11, 2018 SIP submission for full approval instead of the November 4, 2019 request for conditional approval.

II. EPA's Approach to Review Infrastructure SIPs

Pursuant to CAA section 110(a), states must provide SIP revisions addressing relevant infrastructure SIP elements from section 110(a)(2)(A) through (M) or provide certification that the existing SIP contains provisions adequately addressing these elements for the 2015 ozone NAAQS. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ Unless otherwise noted in this rulemaking action, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.² EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis

EPA has analyzed Delaware's October 11, 2018 submission and is proposing to make a determination that the submittal meets the requirements of CAA section 110(a)(2). EPA also reviewed Delaware's revisions to 7 DE Admin. Code 1125 and concludes that the revised references to 40 CFR part 51, appendix W, as published in the July 2019 edition of the CFR, are the correct modeling guidelines to use for purposes of preconstruction permitting review. A

¹ EPA explains its approach in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Delaware's infrastructure SIP to address the 2012 fine particulate matter NAAQS, specifically in EPA's TSD, document number EPA-R03-OAR-2017-0152-0028 (82 FR 44318 (September 22, 2017)).

² See Montana Environ. Info. Center v. EPA, 902 F.3d 971 (9th Cir. 2018).

detailed summary of EPA’s review and rationale for approving Delaware’s submittals may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0663.

IV. Proposed Action

EPA is proposing to approve Delaware’s October 11, 2018 submittal which provides the basic program elements, or portions thereof, specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This proposed rulemaking action does not include action on section 110(a)(2)(I) 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. EPA is also proposing to approve Delaware’s December 16, 2019 submittal which updates 7 DE Admin. Code 1125 in order to incorporate by reference the correct modeling guidelines contained in 40 CFR 51, Appendix W. EPA is soliciting public comments on the issues discussed in this document which will be considered before taking final rulemaking action.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revised section 3.10 of 7 DE Admin. Code, Regulation 1125, effective January 11, 2020. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “**For Further Information Contact**” section of this preamble for

more information).

VI. 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 (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 proposed rule, pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS and revisions to Regulation 1125, 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: January 29, 2020

Cosmo Servidio
Regional Administrator
Region III

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