



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2023-0444; FRL-10461-02-R3]

#### **Air Plan Approval; Delaware; 2022 Amendments to Delaware's Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. This SIP revision consists of Delaware's amendments to its ambient air quality standards for ground level ozone, amendments to citations to the Code of Federal Regulation (CFR) dates for the EPA sampling and analytical procedures and techniques for all ambient air quality standards in Delaware's regulations, and Delaware's amendment removing the sulfur dioxide (SO<sub>2</sub>) 24-hour and annual primary standards that have been revoked by EPA. This action is being taken under the Clean Air Act (CAA).

**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-2023-0444. All documents in the docket are listed on the [www.regulations.gov](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 [www.regulations.gov](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:** Owen Sears, Planning & Implementation

Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2126. Mr. Sears can also be reached via electronic mail at *sears.owen@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On August 16, 2024 (89 FR 66659), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a revision to the Delaware SIP that consists of amendments to Title 7 of the Delaware Administrative Code (7 DE Admin). Specifically, the amendments are to 7 DE Admin 1103 Ambient Air Quality Standards (DE 1103). DNREC's amendments to DE 1103 aligned the language of that regulation to be consistent with existing Federal regulatory standards.

Specifically, DNREC revised DE 1103 to reflect: the most current national ambient air quality standards (NAAQS) for ground level ozone; amendments to update citations in DE 1103 to include the CFR dates in effect at the time DNREC amended DE 1103 for all NAAQS; and amendments to remove the SO<sub>2</sub> 24-hour and annual primary standards. On May 14, 2024, DNREC submitted a withdrawal letter to remove an update to section 1.6.5 of DE 1103 in Delaware's SIP. Delaware withdrew its revision to section 1.6.5 because that regulation erroneously cites an EPA analytical method that was revoked by EPA. The formal SIP revision was submitted by Delaware on November 15, 2022. By a letter dated May 14, 2023, Delaware withdrew a portion of the submission that referenced an obsolete EPA monitoring methodology.

## **I. Background**

The CAA mandates that the EPA set NAAQS for criteria pollutants, which are ozone and related photochemical oxidants, carbon monoxide, lead, nitrogen oxides, particulate matter, and sulfur oxides. The CAA also requires EPA to periodically review the relevant scientific information and the standards and revise them, if appropriate, to ensure that the standards provide the requisite protection for public health and the environment. The CAA also requires states to develop a general plan to attain and maintain the standards in all areas of the country and a specific plan to attain the standards for each area designated nonattainment.

The NAAQS for ground-level ozone were updated on October 1, 2015, to strengthen the NAAQS for ground-level ozone to 0.070 parts per million (ppm). *See* 80 FR 65291.<sup>1</sup> The primary and secondary standards established in 2015 are determined by the fourth-highest daily maximum 8-hour concentration, averaged over three consecutive years. In December 2020, EPA retained the 2015 standards without revision. *See* 85 FR 87256, December 31, 2020.<sup>2</sup>

On June 2, 2010, EPA revised the primary SO<sub>2</sub> NAAQS based on its review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO<sub>2</sub>.<sup>3</sup> *See* 75 FR 35520. The 1-hour SO<sub>2</sub> standard was set at a level of 0.075 ppm, based on the 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentrations. EPA also revoked both the existing 24-hour and annual primary SO<sub>2</sub> standards.

## **II. Summary of SIP Revision and EPA Analysis**

Delaware's November 15, 2022 SIP submission consists of: (1) amendments to its ambient air quality standards in DE 1103 to reflect the current NAAQS for ground level ozone; (2) amendments to its regulatory citations to the CFR dates for the EPA sampling and analytical procedures and techniques for the various NAAQS that Delaware incorporates into its regulations, and (3) amendments to remove from DE 1103 the SO<sub>2</sub> 24-hour and annual primary standards that have been revoked by EPA. Delaware's regulatory amendments aligned DE 1103 with current EPA's NAAQS regulations. By including these revisions to DE 1103 in the Delaware SIP, the SIP will also align with EPA's current NAAQS regulations.

The Delaware SIP's current primary and secondary ozone NAAQS standards are outdated at 0.075 ppm. DNREC's revision to DE 1103 updated the primary and secondary ozone standards in section 6.0 of DE 1103 to reflect the 2015 Ozone NAAQS of 0.070 ppm. This

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<sup>1</sup> 2015 National Ambient Air Quality Standards for Ozone available at [www.federalregister.gov/documents/2015/10/26/2015-26594/national-ambient-air-quality-standards-for-ozone](http://www.federalregister.gov/documents/2015/10/26/2015-26594/national-ambient-air-quality-standards-for-ozone).

<sup>2</sup> 2020 Review of the Ozone National Ambient Air Quality Standards available at [www.federalregister.gov/documents/2020/12/31/2020-28871/review-of-the-ozone-national-ambient-air-quality-standards](http://www.federalregister.gov/documents/2020/12/31/2020-28871/review-of-the-ozone-national-ambient-air-quality-standards).

<sup>3</sup> 40 CFR parts 50, 53, and 58 Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule available at [www3.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf](http://www3.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf).

approval action for Delaware's SIP submittal will make the SIP consistent with EPA's current ozone NAAQS.

DNREC has also amended DE 1103 to update its references to the dates for EPA's sampling and analytical procedures and techniques for the various NAAQS, that Delaware incorporates by reference into DE 1103. The dates, for all sections except 1.6.5, are updated to July 1, 2019, which was the most current version of the CFR as of the time that DNREC revised DE 1103. This approval action will incorporate into Delaware's SIP the NAAQS monitoring methodologies as codified in the 2019 CFR, which was the most recent version of the CFR at the time Delaware revised DE 1103. Updating these references will strengthen the Delaware SIP.

Additionally, Delaware removed subsections 4.2 and 4.3 from DE 1103. These subsections had set forth Delaware's SO<sub>2</sub> 24-hour primary standard and SO<sub>2</sub> annual primary standard, which corresponded to the EPA's revoked SO<sub>2</sub> 24-hour primary standard and SO<sub>2</sub> annual primary standard. This amendment to DE 1103 conforms the Delaware SO<sub>2</sub> ambient air quality standard with EPA's current Federal regulations. This approval action will align Delaware's SIP with EPA's current SO<sub>2</sub> NAAQS, at 40 CFR 50.17. No public comments were received on the NPRM.

### **III. Final Action**

EPA is approving Delaware's submittal of November 15, 2022, as modified by the letter dated May 14, 2023, as a revision to the Delaware SIP.

### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of DE regulation 1103, as effective on July 1, 2019, excluding updates to section 1.6.5, as discussed in sections I and II of this preamble. EPA has made, and will continue to make, these materials generally available through *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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

## **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 (Pub. L. 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

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

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); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

DNREC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an E.J. analysis and did not consider E.J. in this proposed rulemaking. Due to the nature of the proposed action being taken here, this proposed rulemaking

is expected to have a neutral to positive impact on the air quality of the affected area.

Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

*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 approving amendments to Delaware’s ambient air standards 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides,

Volatile organic compounds.

Adam Ortiz,  
Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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. Amend § 52.420 the table in paragraph (c), under the heading “1103 Ambient Air Quality Standards” by revising the entries “Section 1.0”, “Section 4.0”, “Section 5.0”, “Section 6.0”, “Section 8.0”, “Section 10.0”, and “Section 11.0” to read as follows:

**§ 52.420 Identification of plan.**

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(c) \* \* \*

**EPA—APPROVED REGULATIONS AND STATUTES 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>1103 AMBIENT AIR QUALITY STANDARDS</b>			
Section 1.0	General Provisions	08/11/2022	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]</b>	Revised sections
* * * *	* * *			
Section 4.0	Sulfur Dioxide	08/11/2022	<b>[INSERT</b>	Revised sections

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
			DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
Section 5.0	Carbon Monoxide	08/11/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	Revised sections
Section 6.0	Ozone	08/11/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	Revised sections
* * * * *				
Section 8.0	Nitrogen Dioxide	08/11/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER	Revised sections

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
<b>CITATION]</b>				
* * * * *				
Section 10.0	Lead	08/11/2022	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]</b>	Revised sections
Section 11.0	PM <sub>10</sub> and PM <sub>2.5</sub> Particulates	08/11/2022	<b>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]</b>	Revised sections
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[FR Doc. 2024-30404 Filed: 12/20/2024 8:45 am; Publication Date: 12/23/2024]