



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**EPA-R03-OAR-2025-0133; FRL-11841-02-R3]**

### **Air Plan Approval; Delaware; Motor Vehicle Inspection and Maintenance Program**

#### **Certification**

**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. The SIP revision addresses Clean Air Act (CAA) requirements for the enactment of a Basic vehicle emissions inspection and maintenance (I/M) program for the Delaware portion (i.e., New Castle County) of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area (Philadelphia NAA) for the 2015 8-hour ozone national ambient air quality standards (NAAQS).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2025-0133. All documents in the docket are listed on the *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*, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Adam Lewis, 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) 814-2026. Mr. Adam Lewis can also be reached via electronic mail at *Lewis.Adam@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 11, 2025 (90 FR 24554), the EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, the EPA proposed approval of a formal SIP revision, “Basic Performance Standard Certification for New Castle County Inspection and Maintenance Program” (Basic I/M Certification SIP), that was submitted by Delaware on February 14, 2024. The Basic I/M Certification SIP was submitted to satisfy the applicable CAA requirements for the New Castle County portion of the Philadelphia NAA for the 2015 8-hour ozone NAAQS. This Basic I/M certification SIP revision was submitted prior to the reclassification of the Philadelphia NAA from Moderate to Serious nonattainment for the 2015 8-hour ozone NAAQS (89 FR 61025, July 30, 2024). CAA section 182(c)(3) requires states with areas designated as Serious or above to submit SIP revisions that provide for the implementation of an Enhanced I/M program in certain urbanized areas of the NAA. As noted in the NPRM, that requirement will be addressed at a later date.

On October 7, 2022, the EPA determined that the Philadelphia NAA failed to attain the 2015 ozone NAAQS by its August 3, 2021 attainment date and reclassified the area from Marginal to Moderate nonattainment.<sup>1</sup> The requirements for a Moderate ozone nonattainment area include a Basic vehicle I/M program. CAA section 182(b)(4). The Basic I/M requirements are further articulated in the EPA’s I/M Rule at 40 Code of Federal Regulations (CFR) part 51, subpart S.<sup>2</sup> The Federal performance standards<sup>3</sup> for a Basic I/M program are outlined in 40 CFR

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<sup>1</sup> 87 FR 60897 (October 7, 2022).

<sup>2</sup> See 40 CFR 51.350(a) for nonattainment area population I/M criteria applicability.

<sup>3</sup> An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state’s proposed I/M program is compared in terms of its potential to reduce emissions of the ozone precursors, nitrogen oxides (NOx) and volatile organic compounds (VOCs).

51.352. Consistent with the I/M Rule, areas with existing I/M programs need to conduct and submit a performance standard modeling analysis as well as make any necessary program revisions as part of their Moderate area SIP submissions to ensure that I/M programs are operating at or above the Basic I/M performance standard level for the 2015 8-hour ozone NAAQS. These areas may determine through the performance standard modeling analysis that an existing SIP-approved program would meet the performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the state could submit a SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting revised regulations.<sup>4</sup>

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

Delaware submitted the February 14, 2024, SIP revision to address this Basic I/M program requirement for the Delaware portion of the 2015 ozone Philadelphia NAA as required for the Moderate classification. Due to more stringent nonattainment classifications under previous ozone NAAQS and Delaware's inclusion as part of the Ozone Transport Region (OTR),<sup>5</sup> Delaware previously established and continues to implement an Alternate Low Enhanced I/M program in New Castle County and Kent County.<sup>6</sup> The EPA recently approved (via a final rule published November 4, 2024, 89 FR 87500) updates to Delaware's prior approved I/M SIP that were submitted in March 2023.<sup>7</sup> This previous I/M program revision included regulatory updates made between the inception of Delaware's current Alternate Low Enhanced I/M program and March 2023. In approving this March 2023 SIP revision, the EPA's November 2024 action determined that the current I/M program in New Castle County (and Kent

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<sup>4</sup> See section II.E of the October 7, 2022 final rule (87 FR 60897, 60906) and the April 13, 2022 proposal (87 FR 21842).

<sup>5</sup> The Philadelphia-Wilmington-Trenton NAA was previously classified as severe nonattainment under the now revoked 1979 ozone NAAQS. CAA Section 184(b)(1)(A) provides that an area within a state in an ozone transport region and with a metropolitan statistical area population of 100,000 or more must implement an enhanced I/M program.

<sup>6</sup> See 40 CFR 51.351(g) for the Alternate Low Enhanced Performance Standard.

<sup>7</sup> See 89 FR 87500 (November 4, 2024) and 89 FR 66295 (August 15, 2024) for these actions and a summary of the Delaware specific CAA requirements for I/M Programs, additional background on the Ozone NAAQS, and resulting Delaware Area Ozone Nonattainment Designation.

County) met the applicable CAA requirements for an Alternate Low Enhanced I/M program, a more stringent standard than a Basic program for which Delaware now seeks certification. Delaware's Alternate Low Enhanced I/M program (applicable to the Kent and New Castle Counties) was originally codified at Delaware Code Title 7, Regulation 31.<sup>8</sup>

Pursuant to the February 14, 2024, SIP submittal, the EPA concurs with the State's determination that the Delaware I/M program for New Castle County (within the 2015 Ozone Philadelphia NAA) meets the applicable performance standard and requirements for a Basic I/M program. Further details of Delaware's Alternate Low Enhanced I/M program, the February 14, 2024 SIP submittal, and the rationale for the EPA's proposed (and now final) action are explained in the NPRM and will not be restated here.

### **III. EPA's Response to Comments Received**

The EPA's June 11, 2025 NPRM (90 FR 24554) opened a 30-day public comment period, which closed on July 11, 2025. The EPA received one anonymous comment that is generally supportive of enforcement and strengthening of the NAAQS. The comment provides no further explanation or context as to the relevancy to this action. Therefore, the EPA is not responding to this comment.

### **IV. Final Action**

The EPA is approving the Basic I/M Certification SIP submitted by Delaware on February 14, 2024 for the New Castle County Portion of the Philadelphia NAA for the 2015 8-hour ozone NAAQS as satisfying the applicable CAA requirements.

### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action

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<sup>8</sup> Recodified by the State as 7 DE Admin. Code 1131 in 2012.

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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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 the 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Amy Van Blarcom-Lackey,  
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. In § 52.420, the table in paragraph (e) is amended by adding the entry “Basic vehicle emission inspection and maintenance (I/M) program requirement certification for the 2015 ozone national ambient air quality standard” at the end of the table to read as follows:

**§ 52.420 Identification of plan.**

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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Basic vehicle emission inspection and maintenance (I/M) program requirement certification for the 2015 ozone national ambient air quality standard.	Delaware's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2015 ozone NAAQS nonattainment area (i.e., New Castle County)	2/14/2024	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	Certification that Delaware’s previously approved regulation at 7 DE 1131 meets the requirement for a basic I/M program in a moderate ozone nonattainment area in the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area for the 2015 ozone NAAQS.