



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-0215; FRL-13068-01-R3]

Air Plan Approval; Delaware; Excess Emissions Provisions Pertaining to Periods of Startup, Shutdown and Malfunction Events

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the state implementation plan (SIP) for three state regulations submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) on February 3, 2025. The proposed 2025 revisions to the SIP amend certain startup and shutdown provisions in a manner that avoids the deficiencies that the EPA identified in a disapproval action dated October 23, 2023, in which the Agency disapproved portions of a prior SIP revision dated November 22, 2016. This action is being taken under section 110 of the Clean Air Act (CAA).

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-2025-0215** at www.regulations.gov, or via email to gordon.mike@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the 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. The 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 www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Bryan Cashman, 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) 814-2012. Mr. Cashman can also be reached via electronic mail at cashman.bryan@epa.gov.

SUPPLEMENTARY INFORMATION: On February 3, 2025, the State of Delaware through DNREC submitted four separate SIP revisions to correct deficiencies identified in a prior 2023 action in which the EPA disapproved portions of a SIP revision dated November 22, 2016 (88 FR 72688; October 23, 2023). The EPA determined in the 2023 disapproval action that provisions in the 2016 SIP revision did not address the deficiencies identified in the EPA's June 2015 SIP Call (80 FR 33840, June 12, 2015) related to exemptions during periods of startup, shutdown, and malfunction (SSM) from the otherwise applicable SIP emission limitations, and the SIP submission contained insufficient analysis to meet the requirements of section 110(l) of CAA.

In response, Delaware amended the following four state regulations relating : excess emissions during SSM events that comprise the SIP revisions submitted February 3, 2025: 7 Delaware Administrative Code (DE Admin. Code) 1104 - Particulate Emissions from Fuel Burning Equipment; 7 DE Admin. Code 1105 - Particulate Emissions from Industrial Process Operations; 7 DE Admin. Code 1109 - Emission of Sulfur Compounds from Industrial Operations; and 7 DE Admin. Code 1114 - Visible Emissions. In this proposed rulemaking, the EPA is proposing to

approve the amendments to the following three state regulations into the State's SIP: 7 DE Admin. Code 1104, 1105, and 1109. Delaware submitted, and the EPA views the SIP revisions for each of the three state regulations as separate and the Agency may take final action on each separately. This notice of proposed rulemaking (NPRM) does not include Delaware's submitted SIP revision applicable to 7 DE Admin Code 1114 which the EPA will address separately.

I. Background

A. The EPA's 2015 SSM SIP Action, Environmental Committee of the Florida Electric Power Coordinating Group, Inc. v. EPA, 94 F.4th 77 (D.C. Cir. 2024), and Delaware's SSM SIP Revisions

On June 12, 2015, the EPA finalized the 2015 SSM SIP Action¹ which clarified, restated, and updated the EPA's national policy regarding SIP provisions applying to excess emissions that occur during periods of SSM. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. The EPA established an 18-month deadline by which the affected states had to submit such SIP revisions and states were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. Delaware submitted a revision to its SIP on November 22, 2016.² On October 23, 2023 (88 FR 72688), the EPA took final action disapproving certain portions of Delaware's November 22, 2016, SIP revision based on the EPA's finding that the SIP revision did not correct the remaining deficiencies in Delaware's SIP identified in the 2015 SSM SIP Action. The EPA's disapproval triggered mandatory sanctions and an obligation for the EPA to issue a Federal Implementation Plan (FIP). *See* 88 FR 72688, 72690 (October 23, 2023).

¹ 80 FR 33840 (June 12, 2015). State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction.

² 2016 DE SIP - Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Start-up and Shutdown.

However, as a result of the March 1, 2024, decision from the United States Court of Appeals for the District of Columbia Circuit in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), certain portions of the EPA’s 2015 SSM SIP Action were vacated by the D.C. Circuit and therefore have no legal effect. Thus, certain States subject to the 2015 SSM SIP Action no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct a deficiency identified in the SIP call. In other words, by partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Delaware’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. Therefore, the EPA issued an error correction to terminate the triggering of mandatory sanctions and FIP obligation following the October 23, 2023, disapproval. *See* 89 FR 104434 (December 23, 2024). The EPA, however, did not withdraw the disapproval action because the substantive basis for the disapproval was not erroneous. *See* 89 FR 87826, 87828 (November 5, 2024).

On February 3, 2025, Delaware submitted to the EPA proposed SIP revisions amending the four state regulations from the 2016 SIP revision that the EPA disapproved in October 2023. Three of those state regulations are the subject of this proposed rulemaking.

B. Delaware’s Provisions Related to Excess Emissions

The EPA’s 2015 SSM SIP Action determined that the following Delaware regulations were substantially inadequate to meet CAA requirements for SIP provisions: 7 DE Admin. Code 1104 §1.5 (Particulate Emissions from Fuel Burning Equipment); 7 DE Admin. Code 1105 §1.7 (Particulate Emissions from Industrial Process Operations); 7 DE Admin. Code 1108 §1.2, (Sulfur Dioxide Emissions from Fuel Burning Equipment); 7 DE Admin. Code 1109 §1.4 (Emissions of Sulfur Compounds From Industrial Operations); 7 DE Admin. Code 1114 §1.3 (Visible Emissions); 7 DE Admin. Code 1124 §1.4 (Control of Volatile Organic Compound

Emissions); and 7 DE Admin. Code 1142 §2.3.1.6 (Specific Emission Control Requirements).³

These regulations included provisions that provided a state official with the discretion, through the permitting process, to exempt sources from otherwise applicable SIP emission limitations, or to set alternative limitations for periods of SSM inconsistent with the SIP requirements. 78 FR 12460, 12495 (February 22, 2013) and 80 FR 33840, 33960 (June 12, 2015).

Delaware submitted a SIP revision on November 22, 2016, in response to the 2015 SIP Call. In addition to addressing the 2015 SIP Call deficiencies identified for 7 DE Admin. Code 1104 §1.5, 7 DE Admin. Code 1105 §1.7, 7 DE Admin. Code 1109 §1.4, and 7 DE Admin. Code 1114 §1.3, Delaware's 2016 submission noted that the deficiency highlighted in 7 DE Admin. Code 1108 §1.2 (Sulfur Dioxide Emissions from Fuel Burning Equipment) was corrected by a previous SIP revision, which was submitted to the EPA on July 10, 2013. A final rule in which the EPA acted on this 2013 submission to address 7 DE Admin. Code 1108 §1.2 published in the *Federal Register* on July 11, 2022.⁴

Delaware's 2016 SIP revision also requested that the EPA approve a change to the Delaware SIP by removing 7 DE Admin. Code 1124 §1.4 (Control of Volatile Organic Compound Emissions) and 7 DE Admin. Code 1142 §2.3.1.6 (Specific Emission Control Requirements) in their entirety, thereby removing these provisions, and their deficiencies, from the Delaware SIP. A final rule by the EPA approving these revisions which remedied 7 DE Admin. Code 1124 §1.4 and 7 DE Admin. Code 1142 §2.3.1.6 published in the *Federal Register* on February 14, 2023.⁵

On October, 23, 2023, the EPA published a final action in the *Federal Register* related to the remaining four provisions 7 DE Admin. Code 1104 §1.5, 7 DE Admin. Code 1105 §1.7, 7 DE Admin. Code 1109 §1.4, and 7 DE Admin. Code 1114 §1.3, identified in the EPA's 2015

³ See 80 FR 33840, 33960 (June 15, 2015).

⁴ 87 FR 41074 (July 11, 2022), Air Plan Approval; Delaware; Sulfur Content of Fuel Oil.

⁵ 88 FR 9399 (February 14, 2023); Air Plan Approval; Delaware; Removal of Excess Emissions Provisions.

SIP Call that had not yet been addressed by prior EPA actions.⁶ In that document, the EPA finalized disapproval of the remainder of Delaware's 2016 SIP revision for multiple reasons.

With regards to 7 DE Admin. Code 1104 and 7 DE Admin. Code 1105, Delaware's 2016 submittal requested the EPA revise the Delaware SIP to replace the shorter averaging periods for particulate emission limitations with 30-day rolling averages with no change to the numerical level of the limit. The increases in averaging times were not supported by a sufficient analysis explaining why these changes met the requirements of CAA section 110(l). Additionally, Delaware did not provide an explanation or analysis of how increasing the averaging time of the affected limits without any adjustment to their levels would, or would not, affect attainment or maintenance of the national ambient air quality standards (NAAQS).

With regards to 7 DE Admin. Code 1109, Delaware's 2016 SIP revision requested the EPA to approve removal of the provision from the SIP in its entirety, while retaining it in the State regulation, and stated that other requirements, including the CAA New Source Performance Standards (NSPS), were adequate to protect the NAAQS. The EPA explained that this was problematic because the specific NSPS which Delaware cited allowed for periods of excess emissions during SSM events. Additionally, the EPA explained that there was insufficient analysis to explain how these changes would meet the requirements of CAA section 110(l). A more detailed explanation of the reasons for the disapproval can be found in the June 21, 2023, NPRM.⁷

II. Summary of SIP Revision and EPA Analysis

In this proposed rulemaking, the EPA is evaluating the February 3, 2025, SIP submission from Delaware. Delaware's revisions to 7 DE Admin. Code 1104 §1.5, 7 DE Admin. Code 1105 §1.7, 7 DE Admin. Code 1109 §1.4, and the EPA's corresponding analysis are explained below. Delaware is proposing to remove the potential exemption from the otherwise applicable SIP

⁶ 88 FR 72688 (October 23, 2023); Air Plan Disapproval; Delaware; Removal of Excess Emissions Provisions.

⁷ 88 FR 40136 (June 21, 2023) NPRM, Air Plan Disapproval; Delaware; Removal of Excess Emissions Provisions.

emission limitations during startup and shutdown in each of the three provisions. An underline/strike-out version of each regulation, showing the changes to the regulations, is included in the docket for this rulemaking.⁸

A. 7 DE Admin. Code 1104 - Particulate Emissions from Fuel Burning Equipment

Specifically, 7 DE Admin. Code 1104 establishes particulate matter emissions limitation for fuel burning equipment with a heat input capacity equal to, or greater than 1 million British Thermal units (MMBtu) per hour and addresses emissions during startup and shutdown events. Regulated sources include commercial and industrial generators, engines, boilers and turbines. Delaware revised its State regulation to: 1) remove language from the SIP that could potentially allow exemptions from the emission limitations during startup and shutdown; 2) remove from 7 DE Admin. Code 1104 the 0.3 lb/MMBtu, maximum 30-day rolling average emission limitation⁹ that the EPA had disapproved in 2023 and never included in the Delaware SIP; and 3) thus make the 0.3 lb/MMBtu, maximum two-hour average emission limitation apply to affected sources at all times and maintain the numerical limit and averaging time that is in the SIP.

Delaware requests in the SIP submission that the EPA approve the removal of Subsection 1.5 of Section 1.0 “General Provisions,” from Delaware’s approved SIP. This subsection allowed a potential exemption from the emission limitations specified in subsection 2.1 during startup and shutdown if a source was operating under a permit issued under section 2.0 of 7 DE Admin. Code 1102 (Permits). The EPA is proposing to approve Delaware’s request to remove from the SIP Subsection 1.5 of Section 1.0 of 7 DE Admin. Code 1104. If the removal is finalized, the existing SIP-approved emission limitation of 0.3 lb/MMBtu, maximum two-hour average limit will then apply at all times.

⁸ See Delaware’s Final Regulations published in the Delaware Register of Regulations, Vol. 28, Issue 8 on February 1, 2025.

⁹ Delaware amended its State regulation at 7 DE Admin. Code 1104 to remove Subsection 2.2 of Section 2.0 “Emission Limits”, which the EPA disapproved in October 2023 and never incorporated into the SIP because of insufficient analysis demonstrating compliance with CAA section 110(l). This subsection allowed emission of particulate matter up to 0.3 lb/MMBtu heat input over a maximum 30-day rolling average, from any fuel burning equipment which could potentially exceed the 0.3 lb/MMBtu, maximum two-hour average emission limit specified in subsection 2.1.

B. 7 DE Admin. Code 1105 - Particulate Emissions from Industrial Process Operations

The State regulation at 7 DE Admin. Code 1105 ensures that particulate emissions from industrial process equipment do not exceed 0.2 grains per standard cubic foot (gr/scf). Delaware revised its state regulation to: 1) remove language from the SIP that could potentially allow exemptions from emission limitations during startup and shutdown; 2) remove from 7 DE Admin. Code 1105 the “0.2 grains per standard cubic foot, on a 30-day rolling average” emission limitation that the EPA had disapproved in 2023 and never included in the Delaware SIP¹⁰; and 3) thus make the “0.2 grains per standard cubic foot” emission limitation apply at all times, and maintain the limit as it appears in the SIP.

Delaware requests in the SIP submission that the EPA approve the removal of subsection 1.7 of section 1.0 “General Provisions”, from Delaware’s SIP. This subsection allowed a potential exemption from the emission limitations specified in subsection 2.1 during startup and shutdown if a source was operating under a permit issued under section 2.0 of 7 DE Admin. Code 1102 (Permits). The EPA is proposing to approve Delaware’s request to remove from the SIP subsection 1.7 of section 1.0 of 7 DE Admin. Code 1105. As a result, if finalized, the existing SIP-approved 0.2 grains per standard cubic foot emission limit will apply at all times.¹¹

C. 7 DE Admin. Code 1109 - Emissions of Sulfur Compounds from Industrial Operations

The State regulation at 7 DE Admin. Code 1109 sets specific sulfur dioxide (SO₂) emission limitations for sulfuric acid manufacturing and sulfur recovery operations. For instance, the regulation limits SO₂ emissions from sulfuric acid manufacturing operations to 0.5 pounds per ton (lb/ton) for acid mist and sets the maximum SO₂ emission rate of 2,000 parts per

¹⁰ Delaware amended its state regulation at 7 DE Admin. Code 1105 to remove subsection 2.2 of section 2.0 “General Restrictions”, which the EPA disapproved in October 2023 and never incorporated into the SIP because of insufficient analysis demonstrating compliance with CAA section 110(l). This subsection allowed emission of particulate matter up to 0.2 grains per standard cubic foot over a 30-day rolling average which could potentially exceed the 0.2 gr/scf emission limit specified in subsection 2.1.

¹¹ The EPA is also proposing to include in the SIP a non-substantive change to section 5.0 of 7 DE Admin. 1105 where one sentence stating that “[f]or the purpose of interpolation and extrapolation calculations, ‘Coke Burn-Off Rate’ shall be construed to be equivalent to ‘Process Weight Rate’,” was shifted from one location to another within subsection 5.1 without altering the meaning.

million (ppm) for sulfur recovery operations. The State revised the regulation to remove language that could allow potential exemptions during startup and shutdown events and to require sources to meet the emission limitations stated in the regulation at all times.

Delaware requests in the SIP submission that the EPA approve the removal of Subsection 1.4 of Section 1.0 “General Provisions” from Delaware’s SIP. This subsection allowed potential exemptions from the emission limitations imposed in sections 2.0 and 3.0, if a source was operating under a permit issued under section 2.0 of 7 DE Admin. Code 1102 (Permits). The EPA is proposing to approve Delaware’s request to remove from the SIP subsection 1.4 of section 1.0 of 7 DE Admin. Code 1109 such that, if finalized, the SO₂ limits at section 2.0 and 3.0 will apply at all times.

III. Proposed Action

The EPA’s review of this material indicates that the SIP revision submitted on February 3, 2025, is approvable. The February 3, 2025, submission requests that the EPA approve into the Delaware SIP the revised versions of 7 DE Admin. Code 1104, 7 DE Admin. Code 1105, and 7 DE Admin. Code 1109, thus removing subsection 1.5, subsection 1.7, and subsection 1.4 respectively, and the startup and shutdown exemptions contained therein, as described earlier in this document.

The EPA is proposing to approve these three revisions to the Delaware SIP because they are consistent with applicable statutory requirements, strengthen Delaware’s SIP, and align the approved SIP with revised state regulations. The EPA is soliciting public comments on the issues discussed in this document. The EPA is only taking comment on the proposed SIP revisions to the specific provisions discussed in this document. The EPA will consider comments before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of

1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions to 7 DE Admin. Code 1104, 7 DE Admin. Code 1105, and 7 DE Admin. Code 1109, as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through *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).

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- 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 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide.

Amy Van Blarcom-Lackey,
Regional Administrator,
Region III.

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