



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2010-0141; FRL- 9904-14-Region-3]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The SIP revision (also referred to herein as “the attainment plan”) demonstrates Delaware’s attainment of the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) (the 1997 PM<sub>2.5</sub> NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment area (Philadelphia Area). The SIP revision includes Delaware’s attainment demonstration for the Philadelphia Area and motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for New Castle County, Delaware. The attainment plan also includes an analysis of reasonably available control measures (RACT) and reasonably available control technology (RACT), a base year emissions inventory, and contingency measures. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0141. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov)

website. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

By letter dated April 3, 2008, Delaware submitted the SIP revision at issue to EPA. By letter dated April 25, 2012, Delaware submitted revisions to the portion of the SIP revision relating to the MVEBs. The April 25, 2012 MVEBs revised submittal replaced the previously submitted 2009 MVEBs with a budget that is based on the Motor Vehicle Emissions Simulator (MOVES) model and included MVEBs for 2012. On November 19, 2012 (77 FR 69399), EPA published a notice of proposed rulemaking seeking comment on EPA's proposed approval of this SIP revision, including the portion relating to the 2009 and 2012 MVEBs for transportation conformity purposes for New Castle County, Delaware (hereinafter referred to as "the NPR").

In response to the NPR, EPA received a single comment dated November 30, 2012. A summary of the November 30, 2012 comment and EPA's response is provided in Section III (Summary of Public Comment and EPA Response) of this final rulemaking action.

On March 4, 2013, EPA took final rulemaking action on the portion of the attainment plan relating to the base year emissions inventory. *See* 78 FR 10420. As a result of this March 2013 final rulemaking action, no further action needs to be taken on such portion of the April 3, 2008 SIP revision. Therefore, this final rulemaking action relates to the remaining portions of the attainment plan, including: (1) An attainment demonstration for the Delaware portion of the Philadelphia Area; (2) 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware; (3) an analysis of RACM and RACT; and, (4) contingency measures.

On September 19, 2013 (78 FR 57473), EPA published a supplemental NPR that revised and expanded the basis for proposing approval of Delaware's attainment plan for the 1997 annual PM<sub>2.5</sub> NAAQS in light of the developments since EPA issued its initial proposal on November 19, 2012 (hereinafter referred to as "the supplemental NPR"). Principally, the supplemental NPR addressed the potential effects of a January 4, 2013 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) remanding to EPA two final rules implementing the 1997 PM<sub>2.5</sub> NAAQS. In the supplemental NPR, EPA also revised its proposed approval of Delaware's attainment plan for the 1997 PM<sub>2.5</sub> NAAQS to clarify that EPA was not relying upon certain regulations which were part of the attainment plan, because such regulations were not necessary to demonstrate attainment of the 1997 PM<sub>2.5</sub> NAAQS. As part of

this supplemental NPR, EPA also proposed to approve the 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware. EPA did not receive any comments on the September 19, 2013 supplemental NPR.

## **II. Summary of SIP Revision**

The portions of the SIP revision that are subject to this action demonstrate Delaware's attainment of the 1997 PM<sub>2.5</sub> NAAQS and includes: (1) Delaware's attainment demonstration for the Delaware portion of the Philadelphia Area and (2) the 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware. The remaining portion of the attainment plan also includes an analysis of RACM/RACT and contingency measures. The attainment plan does not include a Reasonable Further Progress (RFP) plan; however, for reasons explained in the November 19, 2012 NPR and the supplemental NPR, EPA proposed to make a determination that an RFP plan is not required, because Delaware demonstrated that attainment with the 1997 PM<sub>2.5</sub> NAAQS occurred in the Delaware portion of the Philadelphia Area by the attainment date of April 2010. The rationale for EPA's proposed action is explained in the NPR and the supplemental NPR and will not be restated here.

## **III. Summary of Public Comment and EPA Response**

**Comment:** The commenter endorsed EPA's proposed approval and stated that EPA should approve Delaware's attainment plan and the MVEBs included in the attainment plan. The commenter stated his belief that the reduction of PM<sub>2.5</sub>, sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions in Delaware's attainment plan will allow the Area to reach an overall particulate attainment level. Further, the commenter supported approval of the MVEBs because

the MVEBs are consistent with Delaware's plan for attaining the 1997 PM<sub>2.5</sub> NAAQS. However, the commenter expressed some concerns about Delaware's approach to attaining the 1997 PM<sub>2.5</sub> NAAQS without regulating ammonia (NH<sub>3</sub>) and volatile organic compounds (VOCs). While the commenter noted that Delaware has achieved attainment of the 1997 PM<sub>2.5</sub> NAAQS, the commenter also included a broad statement that New Castle County has not achieved attainment with unspecified "air quality standards prescribed by EPA's regulations."

**Response:** EPA thanks the commenter for endorsing the approval of the Delaware attainment plan and the MVEBs included in the attainment plan and appreciates that the comments submitted also fulfilled an academic writing assignment. EPA agrees with the commenter's conclusion that the attainment plan submitted by Delaware adequately addresses emissions of PM<sub>2.5</sub> and the PM<sub>2.5</sub> precursors SO<sub>2</sub> and NO<sub>x</sub> in order to provide for attainment of the 1997 PM<sub>2.5</sub> NAAQS. Moreover, EPA notes that the Agency has specifically reexamined the issue of whether the attainment plan addresses the correct PM<sub>2.5</sub> precursors in the supplemental NPR. As indicated in the supplemental NPR, EPA has concluded that regulation of emissions of VOC and NH<sub>3</sub> from sources in Delaware was not necessary in order to provide for attainment of the 1997 PM<sub>2.5</sub> NAAQS in the Philadelphia Area.

As to the commenter's divergent opinions that: (1) Delaware has achieved attainment with the NAAQS at issue and (2) New Castle County has not achieved attainment with some unspecified EPA air quality regulations, it is important to note that the SIP revision at issue pertains to the Delaware's attainment plan for the 1997 annual PM<sub>2.5</sub> NAAQS. The record presented clearly supports EPA's approval of this attainment plan for this purpose. Additionally, EPA refers the

commenter to EPA's May 16, 2012 determination that the Philadelphia Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable date, April 5, 2010, and EPA's issuance of a clean data determination for the Philadelphia Area. *See* 77 FR 28782. The administrative record for today's final rulemaking action, in conjunction with EPA's May 16, 2012 final rulemaking action, clearly supports the finding that Delaware has achieved the NAAQS at issue. Due to a lack of specificity on the commenter's part, EPA is unable to further respond to the commenter's concerns relating to New Castle County's attainment with unspecified EPA air quality regulations.

#### **IV. Final Action**

As the base year emissions inventory portion of the SIP revision was previously approved through a separate action (*see* 78 FR 10420), EPA is approving the remaining portions of the SIP revision, which was submitted by the State of Delaware on April 3, 2008, and amended on April 25, 2012, and includes: (1) The attainment plan for the 1997 PM<sub>2.5</sub> NAAQS for the Delaware portion of the Philadelphia Area and (2) the 2009 and 2012 MVEBs for transportation conformity purposes for New Castle County, Delaware. The portions of the attainment plan which are subject to this final rulemaking action include Delaware's attainment demonstration, an analysis of RACM/RACT and contingency measures. Through this rulemaking action, EPA is making a final determination that Delaware's attainment plan meets the applicable requirements of the CAA. For reasons explained in the supplemental NPR, EPA revised its original proposed approval of the attainment plan to propose approval of Delaware's 1997 PM<sub>2.5</sub> attainment plan as meeting the requirements for attainment plans for the 1997 PM<sub>2.5</sub> NAAQS, without reliance on the following measures identified in the attainment plan: (1) Regulation

1142 Section 2.0 for NOx emissions at petroleum refineries; (2) certain control measures for VOC emissions; and, (3) the Clean Air Interstate Rule (CAIR). As discussed in the supplemental NPR, these measures are not necessary for the purposes of meeting the requirements for RACM, RACT, section 189(e) or the attainment demonstration.

#### **IV. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 from date of publication of this document 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 Delaware’s SIP revision which demonstrates attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the Philadelphia Area 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 29, 2013.

W. C. Early,  
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 the entry for the 1997 Annual PM<sub>2.5</sub> Attainment Plan for Delaware and the Motor Vehicle Emissions Budget for 2009 and 2012 at the end of the table to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
1997 Annual PM <sub>2.5</sub> Attainment Plan for Delaware and the Motor Vehicle Emission Budgets for 2009 and 2012	Delaware – Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area	4/3/08 4/25/12	[ <u>Insert Federal Register publication date</u> ] [ <u>Insert page number where the document begins</u> ]	See § 52.427(c)

3. Section 52.427 is amended by adding paragraph (c) to read as follows:

**§ 52.427 Control strategy: Particulate matter**

\* \* \* \* \*

(c) EPA approves the attainment plan for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey- Delaware nonattainment area submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on April 3, 2008, as amended on April 25, 2012. The attainment plan includes the attainment demonstration and motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware. The attainment plan also includes an analysis of reasonably available control measures and reasonably available control technology, contingency measures and the 2002 base year emissions inventory. The 2002 base year emissions inventory was approved in a separate rulemaking action on March 4, 2013 (78 FR 10420).

**DELAWARE’S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS**

<b>Type of control strategy SIP</b>	<b>Year</b>	<b>VOC</b>	<b>NO<sub>x</sub></b>
Attainment Plan (Milestone Year)	2009	257	8,448
Attainment Plan (Out Year)	2012	199	6,273

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