



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0408; FRL-9968-20-Region 3]

Air Plan Approval; Delaware; State Implementation Plan for Interstate Transport for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a portion of a state implementation plan (SIP) revision submitted by the State of Delaware. The Clean Air Act's (CAA) good neighbor provision requires EPA and states to address the interstate transport of air pollution that affects the ability of downwind states to attain and maintain the national ambient air quality standards (NAAQS). Specifically, the good neighbor provision requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in a downwind state. Delaware has submitted a SIP revision that addresses the interstate transport requirements, among other things, for the 2008 ozone NAAQS. EPA has determined that Delaware's SIP has adequate provisions to prohibit the state from significantly contributing to nonattainment, or interfering with maintenance, of the 2008 ozone NAAQS in any other state. EPA is approving Delaware's SIP revision submittal in regards to the good neighbor interstate transport provision in accordance with the requirements of the CAA.

DATES: This rule is effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date**

30 days after date of publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2013-0408 at <http://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION, CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On March 27, 2013, the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted

a revision to its SIP to satisfy the requirements of section 110(a)(2), including 110(a)(2)(D)(i), of the CAA as it relates to the 2008 ozone NAAQS.

I. Background

On March 12, 2008, EPA revised the levels of the primary and secondary ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIP revisions meeting the applicable elements of sections 110(a)(1) and (2).¹ Several of these applicable elements are delineated within section 110(a)(2)(D)(i) of the CAA. Section 110(a)(2)(D)(i) generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four prongs within section 110(a)(2)(D)(i) of the CAA; section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This direct final action addresses the first two prongs, which are also collectively known as the good neighbor provision. According to the CAA's good neighbor provision located within section 110(a)(2)(D)(i)(I), a state's SIP must contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that "contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard." Under section 110(a)(2)(D)(i)(I) of the CAA, EPA gives independent significance to the matter of nonattainment (prong 1) and to that of maintenance (prong 2).

II. Summary of SIP Revision

¹ SIP revisions that are intended to meet the requirements of section 110(a) of the CAA are often referred to as infrastructure SIPs and the elements under 110(a) are referred to as infrastructure requirements.

On March 27, 2013, the State of Delaware through DNREC provided a SIP revision submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. In this rulemaking action, EPA is approving one portion of Delaware's March 27, 2013 submittal—the portion addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA. EPA previously acted on other portions of Delaware's March 27, 2013 SIP submittal for the 2008 ozone NAAQS.²

In order to demonstrate that its SIP adequately addresses interstate transport for the 2008 ozone NAAQS, Delaware's March 27, 2013 submittal identifies measures in its approved SIP that cover stationary, mobile, and area sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x), both of which are precursors to ozone. Delaware's submittal identifies SIP-approved regulations that reduce VOCs and NO_x emissions from a variety of stationary sources within the state, including power plants, industrial boilers, and peaking units. Delaware states in its submittal that its sources are generally controlled with best available control technology (BACT) or lowest achievable emission rate (LAER) level controls. Delaware notes that sources are generally controlled on a unit-by-unit basis at a cost of \$1,300 to \$11,000 per ton of NO_x reduced.³ To substantiate its control costs and feasibility claims, Delaware includes an assessment of potential additional control measures on mobile and stationary sources, including both electric generating unit (EGU) and non-EGU categories. The assessment evaluates, for each source or category, the technical and economic feasibility for additional NO_x and VOC reductions. For non-EGUs, Delaware could not identify any cost efficient controls beyond those

² On April 3, 2014 (79 FR 18644), EPA approved portions of Delaware's March 27, 2013 submittal for the 2008 ozone NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In that action, EPA stated it would take later action on the portion of the March 27, 2013 SIP submittal addressing section 110(a)(2)(D)(i)(I) of the CAA.

³ See "Attachment A," State Submittal – Delaware Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS, www.regulations.gov, Docket number EPA-R03-OAR-2013-0408.

already required by the SIP; estimating that at about \$5,000 per ton of pollutant (VOC, NO_x) reduced, only a small amount of air emission reductions would be seen.⁴ In its submittal, Delaware identifies the following Delaware regulations, which are already included in its approved SIP: 7 DE Admin. Code 1125 (New Source Review); 7 DE Admin. Code 1112 (NO_x Reasonably Available Control Technology (RACT)); 7 DE Admin. Code 1124 (VOC RACT); 7 DE Admin. Codes 1126 and 1136 (vehicle inspection and maintenance (I/M) control measures). In its submittal, Delaware concludes that it has satisfied the requirements for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS because its sources are already well controlled for NO_x and VOCs, and because further reductions beyond the State's current SIP measures for NO_x and VOCs are not economically feasible.

III. EPA Analysis

A. Cross-State Air Pollution Rule

The CAA gives EPA a backstop role to issue federal implementation plans (FIPs), as appropriate, in the event that states fail to submit approvable SIPs. On September 8, 2016, EPA took steps to effectuate this backstop role with respect to emissions in 22 eastern states (not including Delaware) by finalizing an update to the Cross-State Air Pollution Rule (CSAPR) ozone season program that addresses the obligations of good neighbor provision for the 2008 ozone NAAQS. 81 FR 74504. This CSAPR Update establishes statewide NO_x budgets for certain affected EGUs in the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 ozone NAAQS.⁵ The CSAPR Update, which specifically focuses on

⁴ In its March 27, 2013 submittal, Delaware stated that at about \$5,000 per ton, the State could reduce NO_x emissions by about 375 tons per year (tpy) and VOCs by 255 tpy.

⁵ Ground-level ozone is formed when VOCs and NO_x combine in the presence of sunlight. The rate of ozone

reducing EGU NO_x emissions, includes technical information and related analysis to assist states with meeting the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS. The CSAPR Update uses the same framework EPA used when developing the original CSAPR, EPA's transport rule addressing the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS. The CSAPR framework establishes the following four-step process to address the requirements of the good neighbor provision:

- 1) identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS;
- 2) determine which upwind states contribute to these identified problems in amounts sufficient to link⁶ them to the downwind air quality problems;
- 3) identify and quantify, for states linked to downwind air quality problems, upwind emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS; and
- 4) reduce the identified upwind emissions for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind by adopting permanent and enforceable measures in a FIP or SIP.

This four-step framework is informed by cost-effectiveness and feasibility of controls, emissions, meteorology, and air quality factors. In the CSAPR Update, EPA used this four-step framework to determine each linked upwind state's significant contribution to nonattainment or interference with maintenance of downwind air quality.

production can be limited by the availability of either VOCs or NO_x. In the case of the eastern states, ozone reduction has shown to be more effective by reducing NO_x which is why reducing NO_x emissions is the focus of both the CSAPR Update and today's rulemaking action regarding Delaware.

⁶ In this rulemaking action, the terms "link," "linked," or "linkage" indicate an association or relationship between two entities and should not be construed as there being any type of physical connection.

B. EPA's Assessment of Delaware

While EPA's CSAPR Update analysis included an assessment of Delaware, the State was not included in the final CSAPR Update FIPs. In the CSAPR Update, EPA found that steps 1 and 2 of the CSAPR framework linked Delaware to a downwind maintenance receptor in Philadelphia County, Pennsylvania. EPA applied step 3 of the CSAPR framework to establish EGU NO_x emission budgets that reflect NO_x reductions necessary to reduce interstate ozone transport for the 2008 ozone NAAQS.⁷

For this analysis, EPA applied a multi-factor evaluation of cost, NO_x reductions, and air quality improvements. As part of this analysis, EPA explicitly evaluated whether the budget quantified for each state would result in over-control,⁸ as required by precedents of the Supreme Court and D.C. Circuit.⁹ Specifically, EPA evaluated whether at each level of NO_x emission budget, the identified downwind ozone problems (*i.e.*, nonattainment or maintenance problems) are resolved or the upwind contribution from any linked state dropped below the 1% screening threshold used to link the state. This multi-factor evaluation of cost, NO_x reductions, and air quality improvements (including consideration of potential over-control) resulted in EPA's quantification of upwind emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind.¹⁰

C. Air Quality Assessment Tool

⁷ Due to the State's sources already being equivalently controlled, EPA's assessment shows no cost effective EGU NO_x reduction potential available in Delaware by the 2017 ozone season, the implementation date for the CSAPR Update. 81 FR 74504 (October 26, 2016).

⁸ In this rulemaking action, the term "over-control" describes the possibility that a state might be compelled to reduce emissions beyond the point at which every affected downwind state is in attainment. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 2014; *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 127 (D.C. Cir. July 28, 2015).

⁹ *Id.*

¹⁰ CSAPR Update final rule. 81 FR 74504, 74519 (October 26, 2016).

The emission reductions under the various levels of emission budgets analyzed by EPA can result in air quality improvements such that individual receptors drop below the level of the 2008 ozone NAAQS based on the cumulative air quality improvement from the states analyzed. In examining emissions contribution to nonattainment and maintenance receptors for the 2008 ozone NAAQS, EPA used the Air Quality Assessment Tool (AQAT) to estimate the air quality impacts of the upwind state EGU NO_x emission budgets on downwind ozone pollution levels for each of the assessed EGU NO_x emission budget levels. EPA assessed the magnitude of air quality improvement at each receptor at each level of control, examined whether receptors are considered to be solved,¹¹ and looked at the individual contributions of emissions from each state to each of that state's linked receptors. EPA also examined each state's air quality contributions at each emission budget level, assessing whether a state maintained at least one linkage to a receptor that was estimated to continue to have nonattainment or maintenance problems with the 2008 ozone NAAQS.

D. Conclusion

EPA examined emission budget levels of: \$0 per ton; \$800 per ton; \$1,400 per ton; \$3,400 per ton; \$5,000 per ton; and \$6,400 per ton.^{12,13} This analysis accounted for existing limits on Delaware EGUs in the State's March 27, 2013 SIP submittal. Notably, for Delaware, EPA's

¹¹ When the average and maximum design values of a receptor decreases to values below 76 parts per billion (ppb) or (0.076 ppm), the nonattainment and maintenance issues of the receptor would be considered solved.

¹² Due to the close timing of Pennsylvania finalizing its May 2016 regulation "Additional RACT Requirements for Major Sources of NO_x and VOCs," also known as RACT II, to the publication of the CSAPR Update, EPA was not able to factor expected emission limits from RACT II directly into the previously concluded modeling for CSAPR Update when all of the other relevant in-place state and national rules were incorporated. EPA therefore conducted a separate analysis in order to incorporate the impacts of the new PA RACT emission limits in addition to the already incorporated national and state rules. The total results were incorporated into the Agency's assessment at each emission budget level (e.g. \$0/ton through \$6,400/ton) and at each stage of the rulemaking analysis. See "Pennsylvania RACT Memo to the Docket," Docket No. EPA-HQ-OAR-2015-0500 for a more detailed discussion.

¹³ Pennsylvania's RACT II provisions are part of Pennsylvania's strategy to meet its RACT obligations for the 2008 ozone NAAQS. EPA has not yet taken rulemaking action on Pennsylvania's RACT II.

assessment of EGUs' NO_x reduction potential showed no cost effective reductions available in Delaware within the allotted short-term implementation timeframe (by 2017 for the 2008 ozone NAAQS) at every cost threshold EPA evaluated. 81 FR at 74553 (EPA's assessment of EGU NO_x reduction potential shows no cost effective reductions available in Delaware in 2017 at any evaluated cost threshold because they are already equivalently controlled). Further, EPA estimated that implementation of the CSAPR Update along with NO_x controls in Delaware's approved SIP are anticipated to resolve the lone downwind maintenance receptor to which Delaware is linked.¹⁴

EPA evaluated EGU NO_x reduction potential under the CSAPR Update and the assessment showed that there was no cost effective EGU NO_x reduction potential within Delaware at any evaluated cost threshold because the Delaware EGUs are already equivalently controlled.¹⁵ In Delaware's March 27, 2013 submittal, in addition to EGUs, Delaware evaluated sources other than EGUs and the State could not identify any cost efficient controls for reducing VOCs or NO_x beyond those already required by the SIP.

In conclusion, when evaluating all the available information, EPA finds that Delaware has implemented measures that have reduced statewide VOC and NO_x emissions and that should continue to reduce emissions within the State. The maintenance receptor that Delaware is linked to in the CSAPR Update is projected by EPA to have its maintenance issue resolved with CSAPR Update implementation¹⁶ and existing NO_x controls in place in Delaware. EPA finds

¹⁴ As stated in section VI.D. in the preamble of the final CSAPR Update and in the Ozone Transport Policy Analysis Technical Support Document (TSD) used to support the final CSAPR Update, EPA's AQAT assessment indicates that an emissions budget reflecting \$800 per ton of NO_x reduced would resolve the maintenance problem at the Philadelphia, Pennsylvania maintenance receptor (monitor ID 4210100124).

¹⁵ See 81 FR at 74553.

¹⁶ EPA notes that the preliminary 2014-2016 design value for the identified CSAPR Update Philadelphia maintenance site does not reflect the air quality results as a result of the CSAPR Update implementation because

Delaware has no cost effective EGU NO_x emissions reduction potential, beyond what is already required in Delaware's SIP, at or below a \$6,400 per ton threshold used in the CSAPR Update determinations by 2017 for the 2008 ozone NAAQS. Additionally, EPA finds that Delaware's non-EGU sources are also well-controlled and that there is limited VOC and NO_x emissions reduction potential, beyond what it already required in the State's SIP, at and below the \$5,000 per ton threshold. Thus, EPA finds Delaware has fully satisfied its obligation with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS, and we are approving the portion of the March 27, 2013 Delaware SIP submittal addressing prongs 1 and 2 of the interstate transport requirements for the 2008 ozone NAAQS.

IV. Final Action

EPA is approving the portion of the March 27, 2013 Delaware SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS in accordance with section 110 of the CAA for the reasons discussed in this rulemaking.

On April 3, 2014 (79 FR 18644), EPA finalized approval of the following infrastructure elements or portions thereof from the March 27, 2013 submittal: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action approves the remaining portions of the March 27, 2013 SIP revision, which address prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA, also known as the good neighbor provision. EPA did not take action upon these elements in our prior SIP approval action, published on April 3, 2014 (79 FR 18644).

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial

sources began compliance with the rule in May 1, 2017.

amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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 (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 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, addressing Delaware's interstate transport for the 2008 ozone NAAQS, 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, Volatile organic compounds.

Dated: September 11, 2017.

Cecil Rodrigues,
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 a second entry for Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS, immediately after the first entry titled “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS	Statewide	3/27/13	[insert date of Federal Register publication] [insert Federal Register citation]	This action addresses CAA element 110(a)(2)(D)(i)(I).
**	**	*	*	*

* * * * *

[FR Doc. 2017-20598 Filed: 9/26/2017 8:45 am; Publication Date: 9/27/2017]