

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.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP**

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
<b>1103 Ambient Air Quality Standards</b>				
Section 1.0 .....	General Provisions .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
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Section 4.0 .....	Sulfur Dioxide .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
Section 5.0 .....	Carbon Monoxide .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
Section 6.0 .....	Ozone .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
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Section 8.0 .....	Nitrogen Dioxide .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
* * * * *				
Section 10.0 .....	Lead .....	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
Section 11.0 .....	PM <sub>10</sub> and PM <sub>2.5</sub> Particulates	08/11/2022	12/23/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	Revised sections.
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**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 52**  
[EPA–R03–OAR–2023–0206; FRL–11037.1–01–R3]  
**Air Plan Approval; Air Plan Disapproval; Delaware; Removal of Excess Emissions Provisions; Final Correction**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final action.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that a portion of an October 23, 2023, final disapproval action of a State implementation plan (SIP) revision submitted by the State of Delaware was in error and making a correction pursuant to section 110(k)(6) of the Clean Air Act (CAA).  
**DATES:** This final action is effective on December 23, 2024.  
**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R03–OAR–2023–0206. All documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information 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 please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** for additional availability information.  
**FOR FURTHER INFORMATION CONTACT:** General questions concerning this publication should be addressed to Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103; by telephone (215) 814–5511 or by email at [silverman.sean@epa.gov](mailto:silverman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. How is the preamble organized?*

The information presented in this preamble is organized as follows:

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- I. General Information
  - A. How is the preamble organized?
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**II. Background**

On November 5, 2024, the EPA proposed to correct an error in an earlier EPA action, using the authority of section 110(k)(6) of the CAA.<sup>1</sup> Specifically, the proposed action explained that the error occurred in an October 23, 2023, EPA action<sup>2</sup> disapproving revisions to the State of Delaware's SIP which were submitted in response to the 2015 Startup, Shutdown, and Malfunction (SSM) SIP Action.<sup>3</sup>

On June 12, 2015, the EPA finalized the 2015 SSM SIP Action, which clarified, restated, and updated the EPA's national policy regarding SIP provisions applying to excess emissions during periods of startup, shutdown, and malfunction. As part of the 2015 SSM SIP Action, the EPA issued a finding that certain SIP provisions for 36 States that were applicable in 45 statewide and local jurisdictions were substantially inadequate to meet CAA requirements due to how those SIP provisions treated excess emissions during SSM periods. Further, the EPA issued a "SIP call" to each of those 45 air agencies, including the State of Delaware, on the basis that Delaware's SIP contained impermissible director's discretion provisions that were substantially inadequate to meet CAA requirements.<sup>4</sup> To respond to the EPA's SIP call in the 2015 SSM SIP Action, each affected State was required to submit its corrective SIP revision by November 22, 2016. The State of Delaware submitted a SIP revision purporting to address the seven issues identified in EPA's 2015 SSM SIP Action on November 22, 2016. On October 23, 2023, the EPA took final

action<sup>5</sup> disapproving certain portions of Delaware's November 22, 2016, SIP revision based on EPA's finding that the SIP revision did not correct the remaining deficiencies in Delaware's SIP identified by the 2015 SSM SIP Action.<sup>6</sup>

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 SIP call in the 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 the deficiency identified in the SIP call.<sup>7</sup> 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. As a result, the EPA proposed to correct the EPA's October 23, 2023, disapproval action with respect to the consequences of that disapproval. A more complete explanation of the reasons for the proposed error correction can be found in the November 5, 2024, proposed action. Comments on the November 5, 2024, proposed action were due on or before December 5, 2024. The EPA did not receive any comments on the November 5, 2024, proposed action.

**III. What is the EPA correcting?**

In this action, the EPA is correcting the erroneous triggering of mandatory sanctions under CAA section 179 and 40 Code of Federal Regulations (CFR) 52.31 for the State of Delaware following its October 23, 2023 (88 FR 72688), disapproval of Delaware's SIP revision submitted in response to the 2015 SSM SIP call. The EPA is also correcting the erroneous triggering of the EPA's obligation to issue a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B). As a result, in

<sup>5</sup> See 88 FR 72688 (October 23, 2023).

<sup>6</sup> EPA Region 3 issued two final actions that corrected three of Delaware's seven deficient SIP provisions originally identified in EPA's 2015 SSM SIP call. See 87 FR 41074 (July 11, 2022) and 88 FR 9399 (February 14, 2023). On October 23, 2023 (88 FR 72688), the EPA Region 3 finalized disapproval of Delaware's SIP revision that sought to correct the remaining four deficient provisions.

<sup>7</sup> In vacating certain portions of the 2015 SSM SIP Action, the D.C. Circuit's decision did not determine whether the SIP-called provisions were otherwise lawful under the CAA. See e.g. 94 F.4th at 110 ("We thus do not reach the question whether the called SIP's relevant emission restrictions in fact amount to (or must amount to) "emission limitations" per the statutory definition.").

finalizing this error correction action, the imposition of sanctions for the State of Delaware and the FIP obligation for the EPA that were triggered as result of the October 23, 2023 (88 FR 72688) final disapproval action are no longer in effect.

**IV. What action is the EPA taking?**

As a result of the D.C. Circuit's decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is determining that, pursuant to section 110(k)(6) of the CAA, a portion of the EPA's October 23, 2023 (88 FR 72688), final disapproval action of Delaware's SIP revision was in error with respect to the consequences of that disapproval. 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. Thus, the EPA is finding that the triggering of mandatory sanctions and FIP obligation following the October 23, 2023 (88 FR 72688), final disapproval was erroneous and, through this action, is terminating the imposition of sanctions for the State and the FIP obligation for the EPA triggered by that disapproval as they are no longer legally valid.

**V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders (E.O.) can be found at [www.epa.gov/laws-regulations/laws-and-executive-orders](http://www.epa.gov/laws-regulations/laws-and-executive-orders).

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. This action merely corrects an error in EPA's prior action 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 14094 (88 FR 21879, April 11, 2023);
- 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

<sup>1</sup> 89 FR 87826 (November 5, 2024).

<sup>2</sup> 88 FR 72688 (October 23, 2023).

<sup>3</sup> 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, 80 FR 33840 (June 12, 2015).

<sup>4</sup> See 78 FR 12460, 12495–12496 (February 22, 2013) and 80 FR 33840 at 33960 (June 12, 2015).

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 is an error correction taken under section 110(k)(6) of the CAA and does not directly or disproportionately affect children.

- 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 CAA.

- 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 action 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*

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.”

The air agency 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 EJ analysis and did not consider EJ in this action as the EPA views this action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SIP call. 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.

*Congressional Review Act (CRA)*

This action is subject to the CRA, 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Adam Ortiz,**

*Regional Administrator, Region III.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 271 and 272**

[EPA–R08–RCRA–2024–0408; FRL–12226–02–R8]

**Utah: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference**

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

**ACTION:** Direct final rule.

**SUMMARY:** The State of Utah Department of Environmental Quality has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State’s changes through this direct final action. The EPA uses the regulations entitled, “Approved State Hazardous Waste Management Programs” to provide notice of the authorization status of State programs and to incorporate by reference those provisions of State statutes and regulations that will be subject to the EPA’s inspection and enforcement. This rule also codifies in the regulations the approval of Utah’s hazardous waste management program and incorporates by reference authorized provisions of the State’s regulations.

**DATES:** This direct final rule is effective on February 21, 2025 unless the EPA receives adverse written comment by January 22, 2025. If the EPA receives any such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. The Director of the Federal Register approves the incorporation by reference of certain material listed in this direct final rule as of February 21, 2025.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2024–0408; FRL–12226–02–R8 by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* [lin.moye@epa.gov](mailto:lin.moye@epa.gov).

3. *Fax:* (303) 312–6116 (prior to faxing, please notify the EPA contact listed below).

4. *Mail, hand delivery or courier:* Moye Lin, Land, Chemicals and Redevelopment Division, EPA Region 8, Mailcode 8LCR–RC, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Courier or hand deliveries are only accepted during the Regional Office’s normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

*Instructions:* The EPA must receive your comments by January 22, 2025. Direct your comments to EPA–R08–RCRA–2024–0408; FRL–12226–02–R8. The EPA’s policy is that all comments received will be included in the public