

Dated September 19, 2013.

Susan Hedman,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0492; FRL-9901-82-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) submittal from the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Delaware has made a submittal addressing the infrastructure requirements for the 2010 sulfur dioxide (SO₂) NAAQS. This action proposes to approve portions of this submittal.

DATES: Written comments must be received on or before November 25, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0492 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Email: fernandez.cristina@epa.gov.

C. Mail: EPA-R03-OAR-2013-0492, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the

Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA-R03-OAR-2013-0492. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy 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 email at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On May 29, 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) of the CAA for the 2010 SO₂ NAAQS.

I. Background

On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for the 1-hour primary SO₂ at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submittal to EPA for a new or revised NAAQS, but the contents of that submittal may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submittal. The content of such SIP submittal may also vary depending upon what provisions the state's existing SIP already contains.

In the case of the 2010 SO₂ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submittals in connection with the SO₂ NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of State Submittal

On May 29, 2013, Delaware provided a submittal to satisfy section 110(a)(2) requirements of the CAA, that is the subject of this proposed rulemaking, for

the 2010 SO₂ NAAQS. This submittal addressed the following infrastructure elements: section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

EPA has analyzed the above identified submittal and is proposing to make a determination that such submittal meets the requirements of section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, with the exception of the part D, Title I nonattainment planning requirements of section 110(a)(2)(I) and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate action. A detailed summary of EPA's review and rationale for approving Delaware's submittal may be found in the Technical Support Document (TSD) for this action which is available on line at www.regulations.gov, Docket ID Number EPA-R03-OAR-2013-0492.

This proposed rulemaking action does not include section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process. This proposed rulemaking action also does not address section 110(a)(2)(D)(i)(I) of the CAA. In accordance with the decision of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit Court), EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from Delaware as a required SIP submission. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted, 2013 U.S. Lexis 4801 (2013). On June 24, 2013, the Supreme Court granted the petitions of the United States and others and agreed to review this D.C. Circuit Court decision. However, at this time the D.C. Circuit Court decision remains in place and unless it is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until EPA has quantified their obligations under that section. EPA will address the portion of Delaware's May 29, 2013 SIP submittal addressing section 110(a)(2)(D)(i)(I) in a separate action.

III. Proposed Action

EPA is proposing to approve Delaware's submittal that provides the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), necessary to implement, maintain, and enforce the 2010 SO₂ NAAQS, with the exception of the part D, Title I

nonattainment planning requirements of section 110(a)(2)(I) and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate action. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 (Pub.L. 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 proposed rule, pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 2010 SO₂ NAAQS, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 24, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

[Docket No. NTSB-GC-2011-0001]

Rules of Practice in Air Safety Proceedings

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The NTSB amends the comment deadline for a Notice of Proposed Rulemaking (NPRM) published on September 19, 2013. The proposed change in the NPRM would require the Federal Aviation Administration (FAA) to provide releasable portions of the enforcement investigative report (EIR) to each respondent in emergency cases.

DATES: The comment period for the proposed rule published September 19, 2013, at 78 FR 57602, is reopened. Comments must be submitted by November 6, 2013.

ADDRESSES: A copy of the NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594-2003. Alternatively, a copy is available on the government-wide Web site on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2011-0001).