

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose any enforceable duty on any state, local, or tribal governments, or the private sector.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.”

This proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, the EPA has notified the Tribes within the South Coast ozone nonattainment area of the proposed action.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern

environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action is inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 2, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–17573 Filed 8–14–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2024–0016; FRL–12094–01–R3]**

### Air Plan Approval; Delaware; Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve three State implementation plan (SIP) revisions submitted by the State of Delaware to amend Delaware’s motor vehicle emissions inspection and maintenance (I/M) programs, Statewide. Delaware has made several State regulatory amendments to its prior SIP-approved I/M program regulations, to both improve the program and to harmonize its two State I/M program regulations so that the entire State is subject to similar I/M requirements. These SIP revisions apply to both the federally mandated enhanced I/M program applicable to Kent and New Castle Counties that comprise Delaware’s portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ozone nonattainment area, and also to the Sussex County program, where I/M is not federally required but where Delaware has a prior approved, SIP strengthening I/M program (similar in design to a basic I/M program). The amendments to Delaware’s I/M programs include: a change in program coverage to expand exemptions for new vehicles to seven years; addition of vehicle on-board diagnostic (OBD) testing requirements in the Sussex County program; expanded vehicle coverage to include vehicles weighing between 8,501 to 14,000 pounds gross vehicle weight rating (GVWR), for those vehicles model year 2008-and-newer; harmonization of I/M test requirements applicable to older vehicles to include curb idle exhaust and gas cap pressure tests for vehicles 1995-and-older (replacing existing two-speed idle tests on those vehicles previously performed in Kent and New Castle Counties); phase-in of increased minimum repair cost thresholds for obtaining a repair waiver in Sussex County; and the

addition of a Statewide prohibition on tampering-related repairs in qualifying for an emissions repair waiver. EPA's proposed action is in compliance with the Clean Air Act (CAA) because these SIP revisions comply with applicable requirements of the CAA and EPA regulations, and because this proposed revision of the SIP will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS). The intended effect of this action is to update the approved Delaware SIP to maintain consistency between the State-adopted I/M program rules and the federally approved SIP.

**DATES:** Written comments must be received on or before September 16, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0016 at [www.regulations.gov](http://www.regulations.gov), or via email to [goold.megan@epa.gov](mailto:goold.megan@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, 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) 814-2176. Mr. Rehn can also be reached via electronic mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

- I. Background
  - A. Clean Air Act Requirements for I/M Programs
  - B. Background on the History of the Ozone NAAQS and Resulting Delaware Area Ozone Nonattainment Designations and I/M Program Requirements
    - 1. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 1979 1-Hour Ozone NAAQS
    - 2. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 1997 8-Hour Ozone NAAQS
    - 3. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2008 8-Hour Ozone NAAQS
    - 4. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2015 8-Hour Ozone NAAQS
- II. Summary of Delaware's March 2023 I/M SIP Revisions and EPA's Analysis
  - A. Overview of Delaware's March 13, 2023 SIP Submissions
  - B. Review of Delaware's March 2023 SIP Revisions for Compliance With EPA Requirements
    - 1. Compliance With EPA's Enhanced I/M Performance Standard Requirements
    - 2. Demonstrating Noninterference of the Revised SIP Under CAA Section 110(l) With Attainment, Reasonable Further Progress, or Any Other CAA Applicable Requirement
  - C. EPA's Evaluation of Delaware's SIP Revisions
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**SUPPLEMENTARY INFORMATION:** On March 13, 2023, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted three SIP revisions to EPA to amend its prior SIP-approved motor vehicle inspection and maintenance (I/M) programs applicable to all counties in Delaware.

## I. Background

This section provides background for EPA's proposed actions on Delaware's three March 2023 I/M program-related SIP revisions. To provide context, herein we also provide background on the ozone national ambient air quality standard (NAAQS, or "standard") and on Delaware area designations under the ozone NAAQS, which are the pretext for the Federal mandate for CAA I/M program requirements. Finally, we discuss herein EPA requirements for I/M programs for affected ozone nonattainment areas.

### A. Clean Air Act Requirements for I/M Programs

As a control measure to reduce air pollutant emissions from in-use motor

vehicles, the CAA requires states with areas designated as moderate, serious, severe, or extreme ozone nonattainment areas, or those lying within an ozone transport region (OTR) (and having a population exceeding designated population thresholds), to establish a motor vehicle I/M program, to inspect motor vehicles' emissions and, if necessary, to require maintenance or repairs to reduce in-use emissions from vehicles that fail such testing.<sup>1</sup> This emissions testing ensures that vehicles are well-maintained and operate as designed and that they do not exceed established vehicle pollutant limits.

Under the CAA, a "basic" I/M program is required for any area classified as a moderate ozone nonattainment area and having a 1990 Census-defined urbanized area with a population exceeding 200,000 persons.<sup>2</sup> A more stringent, "enhanced" I/M program is required in the Census-defined urbanized area of any ozone nonattainment area classified as serious or worse, where the 1980 Census-defined urbanized area population exceeds 200,000.<sup>3</sup> Additionally, in order to prevent transport of air pollution, states or areas within a CAA-defined OTR shall implement "enhanced" I/M within any metropolitan statistical area (MSA) where the 1990 population exceeds 100,000 persons—regardless of the area's nonattainment designation or classification.<sup>4</sup>

### B. Background on the History of the Ozone NAAQS and Resulting Delaware Area Ozone Nonattainment Designations and I/M Program Requirements

In 1970, Congress enacted the CAA and authorized the EPA to establish NAAQS for criteria pollutants shown to threaten human health, welfare, and the environment—including ozone. In January 1983, Delaware implemented its first I/M program under Title 7 Natural Resources & Environmental Control of the Delaware Administrative Code, Regulation 26 (7 DE Admin. Code 26) applicable to New Castle County, as a control measure in its SIP. Delaware later recodified this regulatory chapter to Regulation 1126.<sup>5</sup>

<sup>1</sup> See CAA sections 182(b)(4), (c)(3).

<sup>2</sup> See CAA 182(b)(4) and 40 CFR 51.350(a)(4) and (6).

<sup>3</sup> See CAA 182(c)(3) and 40 CFR 51.350(a)(2) and (7).

<sup>4</sup> See CAA 184(b)(1) and 40 CFR 51.350(a)(1).

<sup>5</sup> Delaware's Regulation 1126 applies to the Sussex County SIP-strengthening I/M program, which is not required by the CAA, but is substantially similar to an EPA-defined basic I/M program—strengthening the SIP and harmonizing I/M testing across Delaware. Regulation 1131 (then Regulation 31) is a CAA-required, low-enhanced I/

## 1. Delaware Nonattainment Area Designation and I/M Program Requirements Under the 1979 1-Hour Ozone NAAQS

In 1990, Congress amended the CAA, by adding specific requirements for areas in nonattainment of a NAAQS. In 1991, EPA classified the Philadelphia-Wilmington-Trenton, PA-DE-NJ area as severe ozone nonattainment for the 1979 1-hour ozone NAAQS, triggering a requirement for Delaware to establish an enhanced I/M program (as discussed in the section below summarizing I/M requirements) for its portion of that multi-State nonattainment area—comprised of Kent and New Castle Counties.<sup>6</sup> As the Wilmington, Delaware, area also lies in the Northeast OTR, as defined under CAA section 184, Delaware's portion of the Census-defined Philadelphia-Wilmington-Trenton metropolitan statistical area (MSA) having population exceeding 100,000 persons is also subject to enhanced I/M (*i.e.*, Kent and New Castle Counties). Sussex County, Delaware, was not part of the Philadelphia-Wilmington-Trenton nonattainment area (and thus not subject to enhanced I/M), and neither did it meet the MSA/population threshold criteria to subject the area to enhanced I/M under CAA section 184 requirements applicable to ozone transport areas.

In 1995 and 1998, Delaware submitted several SIP revisions to EPA, requesting approval of its enhanced I/M SIP revision to satisfy the 1990 CAA requirements for an enhanced I/M program for the Delaware portion of the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area. Delaware availed itself of flexibility in EPA's I/M rule at 40 Code of Federal Regulations (CFR) part 51, subpart S, that allows an enhanced I/M subject area to adopt an enhanced I/M program that meets an alternate "low enhanced" I/M performance standard if the area: (1) has an approved SIP pursuant to CAA requirements for Reasonable Further

Progress (for the period from 1990–1996); (2) does not have a disapproved plan for Reasonable Further Progress for the period after 1996; and (3) does not have a disapproved plan for attainment of the air quality standards for ozone.<sup>7</sup> EPA refers to this program hereafter as the "low enhanced" I/M program. Delaware's low enhanced I/M program (applicable to the Kent and New Castle Counties of the Wilmington area) was codified at Delaware Code Title 7, Regulation 31.

I/M was not required by the 1990 CAA amendments in Sussex County, as it was designated marginal nonattainment and the Seaford area was not large enough to trigger the MSA-based CAA population threshold for OTR areas or ozone nonattainment-related CAA I/M applicability requirements.<sup>8</sup> However, Delaware opted to enact I/M in the Sussex County area and submitted to EPA a SIP-strengthening I/M program for Sussex County as part of its 1995 and 1998 I/M SIP submissions to EPA. This SIP-strengthening program, similar in design to a basic I/M program, was codified under Title 7, Regulation 26 of the Delaware Code. The purpose of this Sussex County program was to maintain a Statewide I/M program and to provide additional emission benefits for the neighboring Philadelphia-Wilmington-Trenton 1-hour ozone nonattainment area.

Through a series of actions culminating in a final approval on September 30, 1999, EPA approved several 1995 and 1998 Delaware SIP revisions submitted to satisfy applicable 1990 CAA I/M requirements.<sup>9</sup> EPA's September 1999 final rule approved

Delaware's new Regulation 31 "low enhanced" I/M program applicable to Kent and New Castle Counties, while retaining Regulation 26 to apply a "SIP strengthening" I/M program (akin to "basic" I/M) in Sussex County. Additional information on EPA's prior approval of Delaware's enhanced I/M program in the Delaware portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (as well as the SIP-strengthening I/M program for Sussex County) can be found in EPA's final approval actions taken upon those SIP revisions, as referenced in footnote 7 of this action.

## 2. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 1997 8-Hour Ozone NAAQS

In July 1997, EPA revised the ozone NAAQS, replacing the 1979 1-hour primary standard with a more stringent, 8-hour standard.<sup>10</sup> EPA designated the entirety of Delaware as Moderate nonattainment under the 1997 8-hour ozone NAAQS as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area.<sup>11</sup> This 1997 Moderate ozone NAAQS classification subjected the area to basic I/M, for those areas also meeting the CAA urbanized area population threshold. The inclusion of Sussex County in the expanded nonattainment area boundary did not result in the expansion of the I/M program for the Philadelphia-Wilmington-Atlantic City nonattainment area, as Sussex County was not part of the census defined urbanized area in 1990 and thus did not trigger the requirement for a basic I/M program in Sussex County under the applicability thresholds under EPA's I/M rule.<sup>12</sup> Rather than be subject to basic I/M, the remainder of the Philadelphia-

<sup>7</sup> See 40 CFR 51.351(g).

<sup>8</sup> Section 107(d)(1)(C) provides that each ozone and CO area designated nonattainment, attainment, or unclassifiable immediately before the date of enactment of the CAAA was "designated, by operation of law," as a nonattainment, attainment, or unclassifiable area, respectively. Section 107(d)(2)(A) requires EPA to publish a **Federal Register** notification with respect to this designation, as well as the area's classification and boundary. EPA published these designations for the 1979 1-hr ozone NAAQS in the November 6, 1991 (56 FR 56694) **Federal Register**—listing Sussex County, Delaware as a marginal nonattainment area.

<sup>9</sup> On May 19, 1997 (62 FR 27195), EPA conditionally approved Delaware's "low enhanced" inspection and maintenance program, submitted by DNREC on February 17, 1995 and supplemented on November 30, 1995. On September 30, 1999 (64 FR 52657), EPA converted its conditional approval of 1995 and 1998 Delaware's I/M SIP to full approval, on the basis of supplemental SIP revisions submitted by DNREC on June 16, 1998 and May 24, 1999. In an August 10, 2010 final rule (75 FR 48566), EPA approved administrative, non-substantive edits made by Delaware to some of rules codified under title 7, resulting in recodification of the Sussex County I/M Regulation 26 and its retitling to Regulation 1126.

<sup>10</sup> On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS, replacing the 1979 primary 1-hour primary standard with an 8-hour standard, based on an ambient air monitoring site's 3-year average of the annual third-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm.

<sup>11</sup> Original 8-Hour Ozone (1997) areas were designated July 15, 2004. On June 8, 2007, the United States Court of Appeals vacated the subpart 1 portion of the Phase 1 Rule. The Former subpart 1 nonattainment areas were classified under subpart 2 on May 14, 2012 (77 FR 28424), effective June 13, 2012.

<sup>12</sup> See 40 CFR 51.350(a)(4) and (6). Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of the section, shall implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more. Sussex County's population did not exceed the urbanized area population threshold for a basic I/M program, the county continued not to be subject to I/M and instead remained an optional, SIP-strengthening program, not bound by CAA I/M requirements.

M program applicable to the New Castle and Kent Counties,

<sup>6</sup> On November 6, 1991 (56 FR 56994), EPA designated and classified the Philadelphia-Wilmington-Atlantic City consolidated metropolitan area (CMSA) as Severe-15 ozone nonattainment. This includes Kent and New Castle Counties in the Wilmington, Delaware, portion of that CMSA. CAA section 107(d)(1)(C) provides that each area designated nonattainment, attainment, or unclassifiable for the ozone NAAQS immediately before the date of enactment of the CAA "is designated, by operation of law," as a nonattainment, attainment, or unclassifiable area, respectively, and CAA section 107(d)(2)(A) required EPA to publish a **Federal Register** notification with respect to this designation, which EPA did with the November 6, 1991 document effective November 15, 1990.

Wilmington-Atlantic City 1997 ozone NAAQS nonattainment area (including Kent and New Castle Counties in Delaware) remained subject to more stringent enhanced I/M requirements (under the CAA section 184 OTR I/M provision and the area's continued Severe nonattainment classification under the 1979 1-hour ozone NAAQS).

The Philadelphia-Wilmington-Atlantic City 1997 ozone nonattainment area was eventually granted an attainment date extension and later determined to have attained the 1997 standard by its statutory attainment date.<sup>13</sup> However, the Philadelphia-Wilmington-Atlantic City area was never redesignated to attainment of the 1997 NAAQS, and as such remained subject to I/M requirements under that NAAQS. In March 2015, EPA revoked the 1997 ozone NAAQS in favor of a more stringent ozone NAAQS issued in March 2008. However, due to anti-backsliding requirements, the enhanced I/M program requirement in Kent and New Castle Counties remained in place for the revoked NAAQS.<sup>14</sup>

### 3. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour ozone NAAQS.<sup>15</sup> EPA designated the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (with Delaware's portion of the nonattainment area limited to New Castle County) and Seaford, Delaware as two, separate marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012).<sup>16</sup> This marginal designation did not add new I/M applicability requirements, allowing the existing SIP-approved I/M program to remain in place unchanged. The Delaware portion of the Philadelphia-Wilmington-Atlantic City area (New

Castle and Kent Counties) continued to be subject to enhanced I/M requirements under anti-backsliding provisions applicable to the prior 1979 ozone NAAQS and under the OTR requirements of CAA section 184.

On May 4, 2016, EPA issued the Philadelphia-Wilmington-Atlantic City area a 1-year attainment date extension to July 20, 2016, and determined that the Seaford nonattainment area attained the 2008 ozone NAAQS by the attainment date.<sup>17</sup> On November 2, 2017, EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 2008 NAAQS by the July 2016 attainment date.<sup>18</sup> Neither area has been subsequently redesignated to attainment for the 2008 ozone NAAQS under section 107(d)(3) of the CAA. While the Seaford area did not exceed the classification/population thresholds to be subject to I/M, the area continued to operate the prior SIP-approved program for anti-backsliding purposes.

### 4. Delaware Nonattainment Area Designations and I/M Program Requirements Under the 2015 8-Hour Ozone NAAQS

On October 1, 2015, EPA again revised the 8-hour ozone NAAQS.<sup>19</sup> EPA designated the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area (with Delaware's portion of the nonattainment area limited to New Castle County) as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS on April 30, 2018 (effective August 3, 2018).<sup>20</sup> As a result, under EPA's initial designations for the 2015 NAAQS, Delaware faced no new I/M obligation, but Kent and New Castle Counties continued to be subject to enhanced I/M requirements under the anti-backsliding requirements of the prior 1979 ozone NAAQS and under the OTR requirements of CAA section 184.

In October 2022, EPA determined that the Philadelphia-Wilmington-Atlantic City 2015 ozone nonattainment area failed to attain by its attainment date (August 3, 2021) and reclassified the area from marginal to moderate nonattainment.<sup>21</sup> EPA established in that failure to attain/reclassification determination, that a basic vehicle I/M

SIP is required (due by January 1, 2023) for urbanized Moderate areas under the 2015 ozone NAAQS. Existing I/M program areas classified as moderate or worse nonattainment (including areas with a basic or enhanced I/M program implemented under a prior NAAQS) were required to submit a certification SIP demonstrating that the existing program continues to meet applicable CAA requirements for the new ozone NAAQS classification.<sup>22</sup> Delaware submitted a SIP revision on March 4, 2024, for the purpose of demonstrating that the existing enhanced I/M SIP for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area meets all applicable requirements for a basic I/M program required by the 2015 ozone NAAQS. However, that SIP revision relies upon updates to the enhanced I/M SIP submitted to EPA as SIP revisions in March 2023 (that we propose to approve as part of this action). So, EPA intends to defer action on the March 4, 2024 I/M certification SIP submission until after we finalize the pre-requisite action on Delaware's March 2023 enhanced I/M update SIP submissions.

## II. Summary of Delaware's March 2023 I/M SIP Revisions and EPA's Analysis

### A. Overview of Delaware's March 13, 2023 SIP Submissions

Delaware submitted three SIP revisions on March 13, 2023, serving to update the State's existing, SIP-approved I/M programs. These March 2023 SIP revisions pertain to both of Delaware's two I/M programs—the enhanced I/M program applicable to Kent and New Castle Counties and the SIP-strengthening (akin to basic) I/M program in Sussex County. The first of these SIP revisions is an amendment to 7 DE Admin. Code 1131, pertaining to the low enhanced I/M program operated in Kent and New Castle Counties (referred to hereafter as the “Wilmington I/M program,” the “low enhanced I/M program,” or the “Regulation 1131” I/M program).

The second of the March 2023 SIP submittals amends 7 DE Admin. Code 1126 pertaining to the SIP-strengthening I/M program applicable to Sussex County (referred to as the “Sussex County” or “Regulation 1126” program). DNREC revised Regulations 1126 and 1131 to optimize the I/M program and to harmonize the requirements of the two programs, as well as to align Delaware's regulations with a change in State law (*i.e.*, House Bill 246 of the

<sup>13</sup> On January 21, 2011 (76 FR 3840), EPA granted the Philadelphia-Wilmington-Atlantic City area a 1-year extension of its 1997 ozone attainment date (to June 2011). On March 26, 2012 (77 FR 17341), EPA determined that the Philadelphia-Wilmington-Atlantic City area attained the 1997 ozone NAAQS by the applicable attainment date.

<sup>14</sup> EPA revoked the 1997 ozone NAAQS (March 6, 2015; 80 FR 12264), following promulgation of a more stringent 2008 ozone NAAQS on March 12, 2008.

<sup>15</sup> 73 FR 16436 (March 27, 2008).

<sup>16</sup> 77 FR 30088 (May 21, 2012). Note that Kent County, Delaware was not included in either the Philadelphia-Wilmington-Atlantic City or the Seaford ozone nonattainment areas for the 2008 ozone NAAQS, but Kent County was instead designated by EPA as unclassifiable/attainment. Under EPA's anti-backsliding rules, Kent and New Castle County continued to remain subject to enhanced I/M under prior NAAQS and under CAA section 184 OTR I/M program requirements.

<sup>17</sup> 81 FR 26697.

<sup>18</sup> 82 FR 50814.

<sup>19</sup> See 80 FR 65292 (October 26, 2015).

<sup>20</sup> See 83 FR 25776 (June 4, 2018). For the 2015 ozone NAAQS, the Delaware portion of the Philadelphia-Wilmington-Atlantic City 2015 ozone nonattainment area includes Kent and New Castle Counties in Delaware. In the same action, EPA designated the Seaford area (Sussex County) as attainment for the 2015 ozone NAAQS.

<sup>21</sup> See 87 FR 60897 (October 7, 2022).

<sup>22</sup> *Id.* See Section II.E of the October 7, 2022 final rule (87 FR 60897, 60906) and the April 13, 2022 proposal (87 FR 21842).

2017 Delaware General Assembly legislative session), which altered subject vehicle applicability of the program by changing the exemption for new vehicles from five to seven years.<sup>23</sup>

Delaware's third SIP submittal of March 2023 serves to correct an error made by the State in a 2012 State regulatory action, which inadvertently incorporated *Delaware's Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131* into Regulation 31. Delaware never requested that EPA incorporate the 2012 version of Regulation 1131 into the SIP, so that error did not translate to the SIP. However, Delaware's March 2023 SIP revision requests that EPA incorporate the now non-regulatory *Plan for Implementation* as additional supporting materials for inclusion into the SIP, for the purpose of meeting Federal I/M requirements at 40 CFR part 51, subpart S, not addressed by the revised Regulations 1126 and 1131.

These regulatory updates to Regulation 1131 serve to update the rules to reflect changes made by Delaware to revise its low-enhanced I/M program as described (*i.e.*, to increase new vehicle I/M program exemptions to seven years, to expand vehicle coverage to include medium-duty vehicles; to change idle testing requirements to curb idle testing, etc.). Additionally, the version of Regulation 1131 being incorporated by reference updates the prior SIP-approved Regulation 31 program to reflect a State regulatory format change made since EPA last approved the SIP, essentially recodifying that program. The proposed

revised Regulation 1131 being incorporated by reference includes the State-adopted January 1, 2023 revised Regulation 1131 (State effective January 11, 2023). The January 1, 2023 sections of Regulation 1131 being adopted include sections 1.0, 2.0 (including 2.1 through 2.6), 3.0 (including revised definitions), 4.0 (including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.1 through 9.3). Sections 10 through 13 of Regulation 31 are being removed from the SIP, as are Appendices 1(d), 3(a)(7), 3(c)(2), 4(a), 5(a), 5(f), 6(a), 6(a)(5), 6(a)(8), 6(a)(9), 7(a), 8(a), and 9(a)—as revised by the State on May 15, 2012 (with the State effective date of June 11, 2012).

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Delaware's revised Title 7, Regulation 1126 entitled "Motor Vehicle Emissions Inspection Program—Sussex County," as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023). The amended sections of Regulation 1126 being incorporated by reference include Sections 1.0 (including 1.1 through 1.6), 2.0 (including revised definitions), 4.0 (including 4.1 through 4.5), 5.0 (including 5.1 through 5.4), 6.0 (including 6.1), 7.0 (including 7.1 and 7.2), 8.0 (including 8.1 through 8.4), and 9.0 (including 9.1 through 9.3). Section 3.0 of Regulation 1126 and Technical Memorandum 1 and 2 to Regulation 1126 are removed and reserved, based on the January 1, 2023 State rule revisions.

In an August 11, 2010 action, EPA approved into the SIP Delaware's administrative recodification of 7 DE Code 1126.<sup>24</sup> Delaware subsequently finalized a State administrative recodification of 7 DE Admin Code 1131 but did not then submit that administrative change as a SIP revision to EPA. As a result, EPA did not at that time approve into the SIP the State's recodification of Regulation 1131. Delaware's March 2023 SIP revision contains a January 2023 State regulation amendment to Regulation 1131, which is based on a prior 2012 revision of that rule that Delaware had not previously requested be approved as part of the SIP. The relevant regulation in the SIP was most recently approved by EPA in October 2001, when it was still Regulation 31 in the Delaware Code. The 2023 SIP revision serves to incorporate by reference the 2023 version of the State rule revision into the Delaware SIP. The effect of doing so will be to incorporate the latest 2023 State rule amendments, as well as the 2012 State amendments. The effect of approving the PFI SIP would be to remove from Regulations 1126 and 1131 some oversight and administrative provisions formerly contained in regulatory addendums and appendices to Regulation 1126 and 1131 and instead to include them in the SIP as additional State supporting materials.

#### *B. Review of Delaware's March 2023 SIP Revisions for Compliance With EPA Requirements*

##### *1. Compliance With EPA's Enhanced I/M Performance Standard Requirements*

<sup>23</sup> See 21 Delaware Code 2143.

<sup>24</sup> See 75 FR 48566.

As part of its rule specifying I/M requirements, codified at 40 CFR part 51, subpart S, EPA established a “model” program for areas required to implement either basic or enhanced I/M programs.<sup>25</sup> A state compares its own I/M program design choice with EPA’s applicable model program design. The EPA model program serves as a benchmark, or “performance standard,” the emissions results of which serve as means to compare the resultant emission benefits. The performance standard provides a gauge by which the state and EPA can evaluate the effectiveness of each state’s basic or enhanced I/M program, from the perspective of ozone precursor emissions reductions. As such, states are required to demonstrate that their enhanced or basic I/M programs achieve applicable areawide emission levels that are equal to, or lower than, those which would be realized by the implementation of EPA’s respective model I/M program.

With respect to the enhanced I/M performance standard, EPA originally

designed a single enhanced performance standard option under the 1992 version of its I/M requirements rule.<sup>26</sup> However, on September 18, 1995, EPA promulgated the “low enhanced” performance standard described in the Background portion of this action.<sup>27</sup> The low enhanced performance standard is a less stringent enhanced I/M performance standard established to avail areas having an approved SIP for Reasonable Further Progress (RFP) for 1996, and that do not have a disapproved post-1996 RFP plan, or a disapproved plan for attainment of the ozone NAAQS. Delaware has demonstrated compliance with CAA requirements for RFP and attainment planning for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area—and thus has used the “low enhanced” performance standard in its prior approved I/M SIP and can continue to do so for updates to its currently approved I/M SIP. The revised performance standard modeling included as part of Delaware’s 2023 SIP submittal is designed to demonstrate

compliance with this “low enhanced” performance standard.

States seeking to amend an I/M program for an area with an existing CAA-mandated, SIP-approved I/M program (e.g., exemption of additional model years of vehicles from their program) must demonstrate that the program continues to meet the applicable performance standard. This might entail upgrading the program in some other way (e.g., by increasing vehicle type or weight class coverage subject to the program) in order to demonstrate the applicable performance standard is still being met. In addition to the performance standard, per CAA section 110(l) the revised program must be shown not to interfere with an area’s ability to attain the NAAQS in a timely manner.<sup>28</sup>

Table 1, in this document, compares EPA’s low enhanced I/M performance standard with Delaware’s latest program for the March 2023 SIP revisions amending the Wilmington area low enhanced I/M program SIP.

TABLE 1—LOW ENHANCED PERFORMANCE STANDARD COMPARISON FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY OZONE NONATTAINMENT AREA (KENT AND NEW CASTLE COUNTIES)<sup>29</sup>

I/M program element	EPA low enhanced performance standard	Delaware’s low enhanced I/M program
Network Type .....	Centralized .....	Centralized.
Program Start Date .....	Existing programs—1983; Newly subject areas—1995	New Castle County—1995; Kent County—1991.
Test Frequency .....	Annual .....	Biennial.
Model Year Coverage .....	1968 and newer .....	1968 and newer (7 newest model years exempt).
Vehicle Type Coverage .....	Light-duty gasoline vehicles (LDGVs) and light-duty gasoline trucks (LDGTs), up to 8,500 lbs gross vehicle weight rating (GVWR).	1968 and newer LDGVs and LDGTs, up to 8,500 lbs GVWR; and 1970 and newer Medium Duty Gasoline Vehicles (MDVs), up to 14,000 lbs GVWR. <sup>30</sup>
Exhaust Emission Test <sup>31</sup> ....	Idle Test, (1968–1995 model years) <sup>32</sup> .....	Curb Idle test (1968–1995 LDVs and LDTs; and 1970–1995).
Emission Standards .....	1981 and newer—1.2% CO. 1981 and newer—220 ppm HC.	1981 and newer—1.2% CO. 1981 and newer—220 ppm HC.
Emission Control Device Visual Inspection <sup>33</sup> .	1968–71 PCV valve; 1972 and newer EGR valve .....	1981 and newer Catalytic converter.
On-board Diagnostics II (OBDII) Inspection.	1996 and newer LDGVs and LDGTs .....	1996 and newer LDGVs and LDGTs, up to 8,500 lbs GVWR; and 1997 and later LDDVs (light-duty diesel vehicles), up to 8,500 lbs GVWR; and 2008 and newer MDVs (gasoline or diesel), up to 14,000 lbs GVWR. <sup>34 35</sup>

<sup>25</sup> See 40 CFR 51.351 and 51.352.

<sup>26</sup> See original version of EPA’s I/M Requirements Rule (note this version has since been superseded by multiple rule updates), at 57 FR 52950 (November 5, 1992). The enhanced performance standard is specified at 40 CFR 51.351 (57 FR 52950, 52988).

<sup>27</sup> See “EPA’s Inspection and Maintenance Flexibility Amendments” Final Rule, at 60 FR 48029 (September 18, 1995).

<sup>28</sup> See EPA’s *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* [EPA–420–B–22–034 October 2022], p. 4.

<sup>29</sup> See 40 CFR 51.351(g) for the Alternate Low Enhanced Performance Standard.

<sup>30</sup> Delaware is newly extending applicability to include 1996 MDVs (up to 14,000 lbs GVWR), subject to OBD testing, with 1970 and newer MDVs subject to curb idle tailpipe testing. Delaware

exempts all pre-1996 model year, diesel-powered vehicles from the I/M program.

<sup>31</sup> Except for OBDII equipped vehicles, which instead receive an OBDII check in lieu of idle testing. EPA’s position on the use of OBD testing, in lieu of idle tailpipe testing, is detailed in EPA’s Amendments to I/M Program Requirements Incorporating OBD Checks final rule (66 FR 18156; April 5, 2001).

<sup>32</sup> See appendix B to 40 CFR part 51, subpart S.

<sup>33</sup> EPA’s MOVES model no longer models the impacts of all enhanced I/M performance standard parameters listed under EPA’s I/M requirements rule, at 40 CFR 51.351, including certain emission control device inspections and pre-1981 test stringency rate.

<sup>34</sup> Delaware is newly extending applicability to include MDVs (up to 14,000 lbs GVWR), subject to OBD testing.

<sup>35</sup> Excluding exempted new vehicles, up to 7 model years old.

<sup>36</sup> EPA’s enhanced performance standard requirements at 40 CFR 51.351(g) require that the state’s program be shown to obtain the same or lower emission levels (relevant to the subject NAAQS) as the model program by January 1, 2002, to within  $\pm 0.02$  gpm, through their attainment deadline for the applicable NAAQS.

<sup>37</sup> For revisions to a SIP-approved I/M program, the performance standard modeling analysis year is the evaluation date is the date of implementation of the revised I/M program. See EPA’s *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* [EPA–420–B–22–034 October 2022], p. 10. For revisions to an I/M program currently approved into the SIP, the PSM analysis year would be the evaluation date used in the approved SIP or the date of implementation of the revised I/M program, whichever is later.

TABLE 1—LOW ENHANCED PERFORMANCE STANDARD COMPARISON FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY OZONE NONATTAINMENT AREA (KENT AND NEW CASTLE COUNTIES) <sup>29</sup>—Continued

I/M program element	EPA low enhanced performance standard	Delaware's low enhanced I/M program
Evaporative system function check.	None .....	Gas Cap Pressure Test, for 1975–1995 vehicles.
Waiver Rate (for cost-limited I/M repair expenditures).	3% .....	3%.
Motorist Compliance Rate ...	96% .....	See Delaware SIP Appendix A of the Delaware Plan for Implementation for program compliance rate.
Evaluation Date <sup>36 37</sup> .....	January 2002 .....	January 2023.

Though Delaware is not required to demonstrate compliance with a performance standard in the Sussex County area, as I/M there was adopted as a SIP strengthening program (as described in section I. of this action), the State elected to demonstrate that the Sussex County program meets EPA's basic I/M performance standard in order

to rely upon the benefits from this program to meet CAA noninterference requirements under section 110(l). Additionally, the Sussex County program provides additional reductions to offset impacts to the Wilmington area program from the changes to that program. Table 2, in this document, shows the I/M program parameters of

the Sussex County program compared to those of EPA's basic I/M performance standard, to show the assumptions used to model the benefits of the Sussex County program and to demonstrate that the revised program does not backslide from that in the approved SIP.

TABLE 2—BASIC I/M PERFORMANCE STANDARD COMPARISON FOR SUSSEX COUNTY SIP STRENGTHENING PROGRAM <sup>38</sup>

I/M program element	EPA basic performance standard	Delaware's SIP-strengthening I/M program
Network Type .....	Centralized .....	Centralized.
Program Start Date .....	Existing programs—1983; Newly subject areas—1994	Sussex County—1983.
Test Frequency .....	Annual .....	Biennial.
Model Year Coverage .....	1968 and newer .....	1968 and newer (7 newest model years exempt).
Vehicle Type Coverage .....	LDGVs .....	LDVs and LDTs (up to 8,500 lbs GVWR); MDVs, up to 14,000 lbs GVWR. <sup>39</sup>
Exhaust Emission Test <sup>40</sup> ...	Idle Test (1968–1995 model years) <sup>41</sup> .....	Curb Idle test (1968–1995 model years).
Emission Standards .....	1981 and newer—1.2% CO; 1981 and newer—220 ppm HC.	1981 and newer—1.2% CO; 1981 and newer—220 ppm HC.
Emission Control Device	None .....	1981 and newer Catalytic converter.
Visual Inspection <sup>42</sup> .		
On-board Diagnostics II (OBDII) Inspection.	1996 and newer vehicles .....	1996 and newer LDGVs and LDGTs (up to 8,500 lbs GVWR); and 1997 and later LDDVs (light-duty diesel vehicles), up to 8,500 lbs GVWR; and 2008 and newer MDVs (gasoline or diesel), up to 14,000 lbs GVWR. <sup>43 44</sup>
Evaporative system function check.	None .....	Gas Cap Pressure Test, for 1975–1995 vehicles.
Waiver Rate (for repair expenditure limits for I/M repairs).	0% .....	3%.
Motorist Compliance Rate ...	100% .....	See Appendix A of the Delaware SIP Plan for Implementation for compliance rate.
Evaluation Date <sup>45 46</sup> .....	January 2002 .....	January 2023.

To demonstrate the applicable performance standard has been met, the state must model the emissions benefits of its program against that of EPA's

model program, comparing the results to show that their program is at least as beneficial as the applicable performance standard. For an area subject to I/M

under the ozone NAAQS, this analysis (performed using the latest available version of EPA's Motor Vehicle Emissions Simulator Model (MOVES)

<sup>38</sup> See 40 CFR 51.352 Basic I/M Performance Standard.

<sup>39</sup> Delaware exempts all pre-1996 model year, diesel-powered vehicles from the I/M program.

<sup>40</sup> Except for OBDII equipped vehicles, which instead receive an OBDII check in lieu of idle testing. EPA's position on the use of OBD testing, in lieu of idle tailpipe testing, is detailed in EPA's Amendments to I/M Program Requirements Incorporating OBD Checks final rule (66 FR 18156; April 5, 2001).

<sup>41</sup> See appendix B to 40 CFR part 51, subpart S.

<sup>42</sup> EPA's MOVES model no longer models the impacts of all enhanced I/M performance standard

parameters listed under EPA's I/M requirements rule, at 40 CFR 51.351, including certain emission control device inspections and pre-1981 test stringency rate.

<sup>43</sup> Delaware is newly extending applicability to include MDVs (up to 14,000 lbs GVWR), subject to OBD testing.

<sup>44</sup> Excludes exempted new vehicles, up to 7 model years old.

<sup>45</sup> EPA's basic I/M performance standard at 40 CFR 51.352 requires that the state's program be shown to obtain the same or lower emission levels as the model program by 1997 for the ozone NAAQS.

<sup>46</sup> For revisions to a SIP-approved I/M program, the performance standard modeling analysis year is the evaluation date is the date of implementation of the revised I/M program. See EPA's "Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model" [EPA-420-B-22-034 October 2022], p. 10. For revisions to an I/M program currently approved into the SIP, the PSM analysis year would be the evaluation date used in the approved SIP or the date of implementation of the revised I/M program, whichever is later.

entails the comparison of the resultant levels, expressed as a comparison of average grams per mile (gpm), of the ozone precursors nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), from highway mobile sources in the I/M area, as derived from MOVES. For purposes of this comparison, the state uses the latest available meteorological and vehicle composition and usage data, keeping constant all other mobile source emission control program assumptions between the model program and state program scenarios.<sup>47</sup> For comparison

purposes, Delaware also modeled a hypothetical “no I/M” scenario to show the emissions for the same area with no benefits from an I/M program. Delaware used MOVES2014b as the emissions model to generate 2023 evaluation year emissions scenarios. Though EPA has since released newer versions of the MOVES model (*i.e.*, MOVES3 and MOVES4), Delaware commenced development of their MOVES SIP analyses prior to the release of MOVES 3 in 2020.<sup>48</sup>

Table 3, in this document, shows the results of Delaware’s low enhanced I/M

performance standard analysis for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area. As the modeling depicted in Table 3 demonstrates, the NO<sub>x</sub> and VOC emission levels meet EPA’s relevant I/M performance standard, as MOVES modeling for both Kent and New Castle Counties demonstrate that both county’s programs are within the regulatory allowance (40 CFR 51.351(g)(13)) of 0.02 gpm as compared to emission levels resulting from EPA’s Low Enhanced Performance Standard of 40 CFR 51.351.

**TABLE 3—LOW ENHANCED PERFORMANCE STANDARD MODELING RESULTS FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY I/M PROGRAM FOR A 2023 EVALUATION YEAR (KENT AND NEW CASTLE COUNTIES)** <sup>49</sup>

County	I/M program design	NO <sub>x</sub> (in grams per mile)	VOC (in grams per mile)
Kent .....	No I/M Program .....	0.5139	0.3171
	Low Enhanced Performance Standard .....	0.4871	0.2869
	Delaware 2023 Program .....	0.4794	0.2831
	Performance Standard Margin .....	0.0077	0.0038
New Castle .....	No I/M Program .....	0.4236	0.2557
	Low Enhanced Performance Standard .....	0.3988	0.2289
	Delaware 2023 Program .....	0.3950	0.2300
	Performance Standard Margin .....	0.0038	<sup>50</sup> –0.0011

As described in the Background section of this action, an I/M program is not CAA-required in Sussex County, Delaware—as the Seaford area meets neither the minimum MSA population threshold specified under CAA section 184, nor the minimum urbanized area population threshold for a nonattainment area under CAA section 182. However, Delaware elected to voluntarily implement an I/M program in Sussex County as a SIP strengthening measure and to provide additional ozone precursor emission reductions to benefit the Delaware portion of the Philadelphia-Wilmington-Atlantic City ozone nonattainment area. In order to quantify the benefits of this program, for the purpose of claiming benefits from the program to contribute to attainment of the Philadelphia-Wilmington-Atlantic City nonattainment area, Delaware elected to institute a program design similar to EPA’s basic I/M performance standard.<sup>51</sup> EPA’s review of Delaware’s updates to the Sussex County SIP-

strengthening program finds that the revised program is substantially similar to CAA requirements for a basic I/M program.

## 2. Demonstrating Noninterference of the Revised SIP Under CAA Section 110(l) With Attainment, Reasonable Further Progress, or Any Other CAA Applicable Requirement

In the case where a state elects to revise its SIP-approved I/M program, in addition to meeting the applicable CAA section 182 program requirements and applicable performance standard compliance, the state must also demonstrate that the revisions to the prior, SIP-approved I/M program will not interfere with the area’s ability to attain or maintain any NAAQS, or with any other applicable CAA requirement. This type of demonstration is known as a CAA section 110(l) noninterference demonstration.

In order to offset any potential increase in emissions due to expansion

of new car I/M exemptions to seven model years (as a result of a State law change (HB 246)), DNREC elected to harmonize inspection requirements more closely between the low enhanced Regulation 1131 program in the Wilmington area and the Regulation 1126 SIP strengthening I/M program in Sussex County. This includes: (1) the addition of OBD II checks to Sussex County; (2) expansion of OBD testing in all counties, to include OBD II testing for model year 2008 and newer medium duty vehicles between 8500–14,000 lbs GVWR; (3) elimination of 2-speed idle tailpipe testing in the Wilmington area, while retaining curb idle tailpipe testing for pre-1996 LDGVs in all areas (including Sussex County); (4) extension of gas cap pressure check testing to pre-1996 I/M-subject vehicles; and (5) retention of visual inspection for catalytic converters in all counties.

See Table 4, in this document, for a comparison in the difference between emissions under the March 2023 SIP

<sup>47</sup> Requirements for conducting a performance standard analysis are established by 40 CFR part 51, subpart S, with guidance provided by EPA’s guidance document “Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model,” dated October 2022 [EPA-420-B-22-034].

<sup>48</sup> See “EPA Policy Guidance on the Use of MOVES 2014 for SIP Development, Transportation Conformity, and Other Purposes” (EPA-420-B-14-

008, July 2014), p. 6. Delaware’s SIP modeling was completed in 2019, to support regulatory adoption of Regulations 1126 and 1131. However, those rules were delayed during State adoption and not finalized until January 2023, delaying submission of the SIP until March 2023. This MOVES modeling analysis in support of these SIP revisions commenced prior to the subsequent release by EPA of MOVES3.

<sup>49</sup> Delaware’s 2023 I/M program amendments expand OBD II testing Statewide, including

expanding existing OBDII testing requirements in Kent and New Castle Counties on MDV’s to include MDV’s up to 14,000 lbs GVWR.

<sup>50</sup> Kent County, Delaware’s VOC emission factor for the State’s 2023 I/M Program falls within the 0.02 gpm margin of EPA’s enhanced model enhanced performance standard program, as granted under EPA’s enhanced I/M performance standard requirements at 40 CFR 51.351(g)(13).

<sup>51</sup> See CAA section 182(b)(4) and 40 CFR 51.352.



revision I/M programs and the prior SIP-approved Delaware I/M program.

TABLE 4—CAA 110(l) NONINTERFERENCE DEMONSTRATION—DIFFERENCE BETWEEN DELAWARE'S BASELINE (PRIOR, APPROVED SIP PROGRAM) AND THE 2023 REVISED I/M PROGRAM (ALL PROGRAM AREAS) <sup>52</sup>

County	Program description	Difference from baseline SIP in carbon monoxide (CO) (tons per year)	Difference from baseline SIP in VOC (tons per year)	Difference from baseline SIP in NO <sub>x</sub> (tons per year)
Kent .....	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program .....	+17.1	+0.3	+0.7
New Castle .....	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program .....	+184.0	+10.1	+7.8
Sussex .....	Baseline SIP Program .....	.....	.....	.....
	2023 Revised I/M Program .....	− 594.2	− 112.0	− 54.1
Net Change (State-wide).	2023 Revised I/M Program .....	− 393.1	− 101.6	− 45.6

Table 4, in this document, shows that there is a slight increase in annual emissions attributed with Delaware's 2023 SIP revision (due primarily to expansion of new car exemptions) in the Wilmington area counties, as compared to the prior SIP program. However, the small increase in emissions (due to revision of Regulation 1131) within the Philadelphia-Wilmington-Atlantic City nonattainment area is offset by an overall net decrease in emissions from the I/M program Statewide, due to program improvements made Statewide and in particular benefits (due to upgrade of the Regulation 1126 I/M program) in upwind Sussex County.

The Sussex County, SIP-strengthening program was never a CAA-required emission control measure, nor were the emissions benefits attributed to the Sussex County I/M program part of any reasonable further progress demonstration or attainment demonstration for any NAAQS, nor any redesignation/maintenance plan for any NAAQS. Therefore, the reductions attributed to the Sussex program are "surplus." The Regulation 1126 SIP-strengthening program is considered "permanent" and "enforceable," in that it is required by State regulation (without sunset) and has been approved as part of Delaware's SIP for several decades. While Delaware could elect to discontinue I/M in Sussex County in the future, its removal from the SIP would warrant a 110(l) demonstration showing that the removal of the program would not impact the ability of any area to attain the NAAQS or demonstrate RFP, nor interfere with any other applicable

CAA requirement. The emissions reductions from the Sussex County I/M program occur in a county adjacent to the Philadelphia-Wilmington-Atlantic City ozone nonattainment area, providing nearby and surplus emission reductions directly upwind from the Philadelphia-Wilmington-Atlantic City nonattainment area.

In showing that all ozone and fine particulate matter precursor pollutants (NO<sub>x</sub> and VOC), as well as the pollutant CO, are decreased from the 2023 SIP revised program relative to the prior, SIP-approved program, Delaware has demonstrated that the 2023 SIP revision to amend the approved SIP will not interfere with attainment of any NAAQS, reasonable further progress, or any other applicable requirement.

#### C. EPA's Evaluation of Delaware's SIP Revisions

EPA has reviewed Delaware's changes to its enhanced I/M program that differ from the previous federally approved program and has determined that these changes meet the requirements of CAA sections 182 and 184, EPA's I/M Requirements Rule at 40 CFR part 51, subpart S, as well as all other EPA guidance relevant to I/M programs that are cited in this action. EPA finds that Delaware's revised program meets applicable I/M performance standards of 40 CFR part 51.351 and has been shown to comply with the NAAQS noninterference provisions of CAA section 110(l). Delaware's revisions to its SIP-strengthening 1126 program in Sussex County and the incorporation of the *Plan for Implementation* as

additional supporting materials for inclusion into the SIP are similarly approvable. EPA therefore proposes to find that that Delaware's SIP revisions are approvable into the SIP.

EPA will continue to evaluate the effectiveness of Delaware's enhanced I/M program for the Delaware portion of the Philadelphia-Wilmington-Atlantic City I/M program through the annual and biennial reports submitted by Delaware in accordance with 40 CFR 51.366, "Data analysis and reporting," and with the ongoing program evaluation requirements set forth at 40 CFR 51.353(c).

EPA's review of this material indicates that Delaware's requested SIP revisions submitted on March 13, 2023, to amend the SIP-approved I/M program for the Delaware portion of the Philadelphia-Wilmington-Atlantic City area meets all applicable requirements for an enhanced I/M program under CAA section 182 and 184. The SIP strengthening program in Sussex County meets applicable requirements for a basic I/M program. The program enhancements made to both programs have been shown to meet the applicable EPA performance standards, as required by 40 CFR part 51. The improvements made have been shown to offset emission increases brought about by expansion of the new vehicle test exemption to seven years.

### III. Proposed Action

Pursuant to the analysis above, EPA is proposing to approve the relevant revisions to the Delaware I/M rules at 7 DE Admin Code 1126 (for Sussex

<sup>52</sup> The Baseline SIP program is the I/M program, as of 2017, including exemption of vehicles up to 5 years old from testing. The 2023 Revised I/M program includes the disbenefit of expanding the new car exemption from 5 to 7 model years old, but

offsets that emissions increase through the expansion of OBD testing to the Sussex County SIP strengthening program, the expansion of OBD checks in all counties to cover MDVs up to 14,000 lbs GVWR, the expansion of idle testing to LDVs

and LDTs up to 8,500 lbs Statewide (*i.e.*, including Sussex County), and a gas cap pressure check for all pre-1995 I/M-subject vehicles.

County) and 7 DE Admin. Code 1131 (for Kent and New Castle County), as submitted on March 13, 2023. For Regulation 1126, this involves incorporating by reference amendments to sections 1.0 through 9.0 and the removal of Technical Memorandum #1 and Technical Memorandum #2. For Regulation 1131, this entails incorporation of a State recodification of the regulation to reflect a State format change made in 2012, as well as incorporation of regulatory amendments made in 2012 and 2023. This results in a reformat of the prior SIP-approved Regulation 31, replacing sections 1 through 13 with the new format Regulation 1131, reflecting sections 1.0 to 9.0 as amended in January 2023, as well as removal of prior codified portions of Appendices 1, 3, 4, 5, 6, 7, 8, and 9.

EPA is also proposing to approve a SIP revision dated March 13, 2023, submitting for inclusion to the SIP Delaware's "Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131". This PFI details the means by which the Delaware SIP provides for the implementation, maintenance, and enforcement of the ozone NAAQS. Delaware inadvertently added this PFI language to their regulation in a State action dated May 15, 2021. Delaware mistakenly included what were intended as non-regulatory planning provisions to support the I/M regulation as part of a State amendment to Regulation 1131—Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI). In January 2023, Delaware acted to remove the PFI from Regulation 1131,<sup>53</sup> instead making it a standalone, non-regulatory document for inclusion in the SIP to support both Regulation 1131 and Regulation 1126. Delaware has requested that EPA add this PFI document for Regulations 1126 and 1131 as additional materials for inclusion in the Delaware SIP, rather than incorporating these materials into State regulation for incorporation by reference by EPA as part of the SIP.

EPA proposes to grant Delaware's request to approve the now non-regulatory PFI documents as additional supporting, non-regulatory State materials to the SIP.

Approval of these three March 13, 2023 proposed SIP revisions will enable the Department to formally address EPA's applicable CAA 182 and 184 I/M

requirements, as well as other SIP requirements under CAA section 110, and incorporate the same into Delaware's SIP document.

EPA is proposing to approve three Delaware SIP revisions for their I/M programs in the Delaware portion of the Philadelphia-Wilmington-Atlantic City area and the Sussex Area, as well as their accompanying PFI SIP revision, all of which were submitted on March 13, 2023. EPA is soliciting public comments on the proposed SIP revisions discussed in this document. These comments will be considered before taking final action.

#### IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Delaware's revised Title 7, Regulation 1131 entitled "Motor Vehicle Emissions Inspection Program—Kent and New Castle Counties", as State-adopted on January 1, 2023—including updates to revisions made by the State on June 12, 2012, as described in section II.A. of the preamble. In accordance with requirements of 1 CFR 51.5, EPA is also proposing to incorporate by reference Delaware's revised Title 7, Regulation 1126, entitled "Motor Vehicle Emissions Inspection Program—Sussex County", as published as a final rule in the Delaware Register on January 1, 2023 (effective January 11, 2023).

EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.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 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 proposed 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 (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); 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, this proposed rule, to approve three March 13, 2023 Delaware SIP revisions related to the vehicle I/M program, 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.

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

<sup>53</sup> Regulation 1131—Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI) was repealed effective January 11, 2023.

commercial operations or programs and policies.”

The Delaware Department of Natural Resources and Environmental Control did not evaluate environmental justice considerations as part of its revised enhanced I/M program 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. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area.

Consideration of EJ is not required as part of this action proposing approval of Delaware’s revision of its enhanced I/M program SIP revision, 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.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–18173 Filed 8–14–24; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WC Docket Nos. 19–195, 11–10; FCC 24–72; FR ID 233874]

#### Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) seeks comment on proposed changes to the availability data filing and validation processes.

**DATES:** Comments are due on or before September 16, 2024, and reply comments are due on or before October 15, 2024.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 19–195

and WC Docket No. 11–10, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8 a.m. and 4 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

**People with Disabilities.** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact, Will Holloway, Broadband Data Task Force, at [William.Holloway@fcc.gov](mailto:William.Holloway@fcc.gov) or (202) 418–2334.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Fourth Further Notice of Proposed Rulemaking in WC Docket Nos. 19–195 and 11–10, released on July 12, 2024. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-takes-steps-update-broadband-data-collection-processes> or by using the Commission’s EDOCS web page at [www.fcc.gov/edocs](http://www.fcc.gov/edocs).

**Providing Accountability Through Transparency Act Statement.**

The Commission seeks comment on proposed changes to the Broadband Data Collection (BDC) availability data filing process that would limit publication of data on “grandfathered” services, collect terrestrial fixed wireless spectrum authorization information, and additional certifications and supporting data from satellite broadband providers. Additionally, the

Commission seeks comment on amendments and clarifications to several of its BDC data validation rules regarding data retention, sharing Fabric challenges with providers, the professional engineering certification requirement, audits and verification outcomes, restoring locations previously removed from the map, aligning reporting requirements for broadband availability and subscribership data, and adding a new rule section for Fabric challenges. Available at: <https://www.fcc.gov/proposed-rulemakings>.

**Ex Parte Rules.** This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.