This regulation clarifies the definitions of proceeds of amounts collected and collected proceeds for purposes of section 7623 and that the provisions of Treas. Reg. § 301.7623–1(a) concerning refund prevention claims are applicable to claims under section 7623(a) and (b). In clarifying the definitions of proceeds of amounts collected and collected proceeds, this regulation provides that the reduction of an overpayment credit balance is also considered proceeds of amounts collected and collected proceeds under section 7623.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Kirsten N. Witter, Office of the Associate Chief Counsel (General Legal Services).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.7623–1 also issued under 26 U.S.C. 7623. * * *

Par. 2. Section 301.7623–1 is amended by revising the section heading, and paragraphs (a) and (g), to read as follows:

§ 301.7623–1 Rewards and awards for information relating to violations of internal revenue laws.

(a) *In general*—(1) *Rewards and awards.* When information that has been provided to the Internal Revenue Service results in the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, the IRS may approve a reward under section 7623(a) in a suitable amount from the proceeds of amounts collected in cases when rewards are not otherwise provided by law, or shall determine an award under section 7623(b) from collected proceeds.

(2) *Proceeds of amounts collected and collected proceeds.* For purposes of section 7623 and this section, both proceeds of amounts collected and collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

* * * * *

(g) *Effective/applicability date.* This section is applicable with respect to rewards paid after January 29, 1997, except the rules of paragraph (a) of this section apply with respect to rewards and awards paid after these regulations are published as final regulations in the **Federal Register**.

Heather C. Maloy,

(Acting) Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–928 Filed 1–14–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1027; FRL–9253–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure State Implementation Plan Requirement To Address Interstate Transport for the 2006 24-Hour PM2.5 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve and, in the alternative, proposing to disapprove a State Implementation Plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on September 16, 2009, as supplemented with a technical analysis submitted for parallel-processing by DNREC on December 9, 2010, to address significant contribution to nonattainment or interference with maintenance in another State with respect to the 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA's rationale for proposing approval and, in the alternative, proposing disapproval of Delaware's September 16, 2009 SIP revision and its associated December 9, 2010 supplement is described in this proposal. Please note that today's proposed rulemaking action addresses only those portions of Delaware's September 16, 2009 submittal which pertain to significant contribution to nonattainment or interference with maintenance in another State requirements pursuant to the 2006 $PM_{2.5}$ NAAQS. EPA is not taking action at this time on any other portion of Delaware's September 16, 2009 submittal. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–1027 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–1027, 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 No. EPA–R03–OAR–2010–1027. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://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 *http://www.regulations.gov* or e-mail. The *http://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 e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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 *http://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 *http://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: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following:

I. What action is EPA taking?

EPA is proposing to approve and, in the alternative, proposing to disapprove a revision to the Delaware SIP submitted by DNREC on September 16, 2009, as supplemented with a technical analysis submitted by DNREC for parallel-processing on December 9, 2010, to satisfy the infrastructure SIP requirements relating to interstate transport in section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 $PM_{2.5}$ NAAQS. The December 9, 2010 supplement to DNREC's September 16, 2009 revision consists of a technical analysis that provides detailed support for Delaware's position that it has satisfied the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS. The December 9, 2010 supplement to the September 16, 2009 SIP revision was submitted to EPA by DNREC for parallel-processing with a request that it be considered by EPA in taking any rulemaking action on the September 16, 2009 SIP submission. Before EPA takes final action on DNREC's SIP revision to satisfy the infrastructure SIP requirements relating to interstate transport in section 110(a)(2)(D)(i)(I) of the CAA pursuant to the 2006 $PM_{2.5}$ NAAQS, DNREC will have completed conducting the public participation procedures required by section 110(a) of the CAA on the December 9, 2010 supplement to its September 16, 2009 SIP revision. Once those procedures are completed, DNREC will formally submit the technical analysis to EPA, along with all required administrative documentation, as a final supplement to the September 16, 2009 SIP revision. Delaware's December 9, 2010 request for parallel-processing of the technical analysis was done pursuant to the procedures of 40 CFR Part 51 Appendix v at section 2.3.

It should be noted that this proposed rulemaking action addresses only those portions of Delaware's September 16, 2009 submittal which address the 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment or interference with maintenance in another State with respect to the 2006 $PM_{2.5}$ NAAQS. At this time, EPA is not taking action on any additional requirements of section 110(a)(2)(D)(i) or on any other portions of Delaware's September 16, 2009 submittal.

II. What is the background for this action?

On October 17, 2006 (71 FR 61144), EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ which became effective on December 18, 2006. Section 110(a)(1) of the CAA requires States to submit infrastructure SIP revisions to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe.[1] As provided by section 110(k)(2), within 12 months of a determination that a SIP submittal is complete under section 110(k)(1), the Administrator shall act on the plan. As authorized in section 110(k)(3) of the CAA, where portions of the State submittals are severable, EPA may propose to approve only those severable portions of the submittals that meet the requirements of the CAA. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the CAA.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On September 25, 2009, EPA issued its "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) NAAQS" (hereafter the 2009 Guidance). EPA developed the 2009 Guidance to inform States making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS due on September 16, 2009.

As identified in EPA's 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State

[1] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) infrastructure SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

In its 2009 Guidance, EPA indicated that SIP submissions from States pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i) must contain adequate provisions to prohibit air pollutant emissions from within the State that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other State. EPA further indicated that the State's submission must explain whether or not emissions from the State have this impact and, if so, address the impact. EPA stated that the State's conclusion must be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the State SIP submission, such as information concerning emissions in the State, meteorological conditions in the State and the potentially impacted States, monitored ambient concentrations in the State, and air quality modeling. Furthermore, EPA indicated that States should address the "interfere with maintenance" requirement independently, which requires an evaluation of impacts on areas of other States that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, in the 2009 Guidance, EPA stated that States could not rely on the Clean Air Interstate Rule (CAIR) to comply with the CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS.

EPA promulgated CAIR on May 12, 2005 (*See* 70 FR 25162). The CAIR required States to reduce emissions of sulfur dioxide (SO_2), and nitrogen oxides (NO_X) that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for $PM_{2.5}$ and/or ozone in any downwind State. The CAIR was intended to provide States covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted CAIR's provisions and submitted SIPs to EPA to demonstrate compliance with CAIR's requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two criteria pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plan (FIP) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, on August 2, 2010, EPA proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (hereafter the Transport Rule).[2] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a State must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other States. The modeling performed by EPA for the proposed Transport Rule indicates that emissions from the State of Delaware significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another State. The Transport Rule Federal Implementation Plan, (hereafter the Transport Rule FIP), as proposed, thus covers the State of Delaware.

[2] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

The State of Delaware had not expected to be subject to or covered by the proposed Transport Rule FIP. The State's expectation that it would not be covered was based on its periodic emission inventories (PEI) for $PM_{2.5}$ and three Delaware regulations that had been approved by EPA into the Delaware SIP to control $PM_{2.5}$ precursor emissions. On September 16, 2009, Delaware submitted a SIP revision to address the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a State must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS in another State. The State of Delaware's expectation was and is that EPA would approve that SIP revision.

On October 1, 2010, DNREC submitted timely, extensive comments to the rulemaking docket of the proposed Transport Rule FIP (*see* Docket ID No. EPA–HQ–OAR–2009–0491). These comments identify several errors and omissions which DNREC believes were made by EPA in the modeling and analyses performed for the proposed Transport Rule FIP with regard to the State of Delaware. It is DNREC's contention that once EPA fully considers its October 1, 2010 comments submitted on the proposed Transport Rule FIP, that EPA will conclude that the State of Delaware does not contribute to nonattainment and does not interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in another State. It is Delaware's position that its SIP approved rules in conjunction with applicable Federal rules achieve emission reductions in $PM_{2.5}$ precursors such that emissions from the State of Delaware neither significantly contribute to any other State's nonattainment of the 2006 $PM_{2.5}$ NAAQS nor interfere with the ability of any other State to attain the 2006 $PM_{2.5}$ NAAQS. Further, Delaware contends that existing Federal rules (not including CAIR) and State rules approved into its existing SIP, keep Delaware's emissions below the caps that EPA proposed to set for the State of Delaware in the proposed Transport Rule FIP. Both DNREC's comments on the proposed Transport Rule and its December 9, 2010 supplemental technical analysis include comprehensive documentation of the emissions of SO_2 and NO_x from Delaware's PEI, and a thorough explanation of the differences between the PEI and the emissions in the National Emissions Inventory (NEI) used by EPA in performing the modeling and analyses in support of the

proposed Transport Rule. The DNREC contends that the State of Delaware should not be subject to and covered by the final Transport Rule FIP, and that EPA should approve its September 16, 2009 SIP submittal as supplemented by the technical analysis submitted on December 9, 2010.

III. Description of the SIP Revision Submitted by the State of Delaware

In order to meet the "three-years from promulgation due date" of September 16, 2009 for submittal of the infrastructure SIP elements required by section 110(a)(1) of the CAA for the 2006 $PM_{2.5}$ NAAQS promulgated on September 16, 2006; on September 16, 2009, the State of Delaware submitted a SIP revision to address the infrastructure requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. Because EPA's "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) NAAQS" was not issued until September 25, 2009, DNREC contends it could not have met the September 16, 2009 statutory due date had it waited for EPA's guidance to prepare and submit its infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS. The DNREC makes the point that until the 2009 Guidance was issued, Delaware was not aware that a technical analysis was required to be part of a SIP submittal to satisfy section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. It is DNREC's contention that its October 1, 2010 comments submitted to EPA on the proposed Transport Rule (*see* Docket ID No. EPA–HQ–OAR–2009–0491) meet the 2009 Guidance's requirement for a technical analysis in support of its September 16, 2009 SIP submittal to satisfy section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. Despite this contention and in the best interests of the State of Delaware, DNREC submitted a supplement to its September 16, 2009 submittal dated December 9, 2010 which consists of a technical analysis to support the September 16, 2009 submittal. The DNREC's December 9, 2010 supplement uses the comments, data, and information submitted by Delaware on the proposed Transport Rule to form the basis of a technical analysis in support of its September 16, 2009 SIP revision to comply with EPA's September 25, 2009 Guidance. In its September 16, 2009 and December 9, 2010 submissions, DNREC indicates that the State of Delaware has complied with the section 110(a)(2)(D)(i)(I) requirements of the CAA, addressing interstate transport for the 2006 $PM_{2.5}$ NAAQS, through promulgation of:

A. 7 DE Admin. Code 1146, Electric Generating Unit Multi-Pollutant Regulation,

B. 7 DE Admin. Code 1142, Section 2, Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and

C. 7 DE Admin. Code 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions.

Each of the above regulations imposes a level of control based upon Best Available Control Technology (BACT), and significantly reduces emissions from Delaware's largest Electric Generating Units (EGUs), industrial boilers, and peaking units. These regulations have been approved by the EPA as revisions to Delaware's SIP.[3]

Both Delaware's entire September 16, 2009 SIP submittal and the entire December 9, 2010 supplement to the September 16, 2009 submittal are included in the rulemaking docket for today's proposed action (*see* Docket ID No. EPA–R03–OAR–2010–1027). As previously stated, it is Delaware's position that its SIP-approved rules in conjunction with applicable Federal rules (not including CAIR) achieve emission reductions in $PM_{2.5}$ precursors such that emissions from the State of Delaware neither significantly contribute to any other State's nonattainment of the 2006 $PM_{2.5}$ NAAQS nor interfere with the ability of any other State to attain the 2006 $PM_{2.5}$ NAAQS. Further, Delaware contends that these emission reductions keep Delaware's emissions below the caps EPA proposed to set for the State of Delaware in the proposed Transport Rule.

IV. What is EPA's evaluation of the State's submittals?

On September 16, 2009, the State of Delaware submitted a SIP revision to address the requirements of section 110(a)(1) and section 110(a)(2)(A)–(M) of the CAA, pursuant to the 2006 $PM_{2.5}$ NAAQS. EPA subsequently published a **Federal Register** notice on June 3, 2010 (75 FR 31340) proposing approval of certain elements, or portions thereof, of Delaware's SIP submittals for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. At that time, EPA did not take any proposed action on any portion of Delaware's SIP submittals to address the section 110(a)(2)(D)(i)(I) requirements for the 1997 ozone or the 1997 and 2006 $PM_{2.5}$ NAAQS. Today's action is proposing approval and, in the alternative, proposing disapproval of that portion of Delaware's September 16, 2009 submittal, as supplemented on December 9, 2010, pertaining to the section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment or interference with maintenance with respect to the 2006 $PM_{2.5}$ NAAQS.

Delaware has determined that it has complied with the requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, through the promulgation of its SIP-approved regulations to reduce $PM_{2.5}$ precursor emissions of SO_2 and NO_X from EGUs, industrial boilers, and peaking units. Delaware started with the assumption that it did significantly impact downwind areas and moved forward and regulated NO_X and SO_2 emissions from its large EGU and industrial boilers including EGUs with small annual emissions, but high daily emissions (typically referred to as high energy demand day units) with BACT level controls. Because of this, Delaware believes it has clearly mitigated transport and has adequately addressed CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS.

On August 2, 2010 (75 FR 45210), EPA proposed a Transport Rule FIP that would, if finalized as proposed, identify the emission reductions needed in 32 States in the eastern United States to prohibit air pollutant emissions from sources within a State from significantly contributing to nonattainment in or interfering with maintenance of the NAAQS in any other State. The proposed Transport Rule would replace CAIR and would address the section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS. The modeling and analyses conducted by EPA for the proposed Transport Rule FIP indicated that emissions from Delaware significantly contribute to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in downwind areas. Therefore, Delaware is among those States identified in the proposed Transport Rule FIP as significantly contributing to nonattainment or interfering with

[3] Regulation 1146—Electric Generating Unit Multi-Pollutant Regulation. Final rule published August 28, 2008 (73 FR 50723), effective September 29, 2008. Regulation 1148—Control of Stationary Combustion Turbine Electric Generating Unit Emissions. Final rule published November 10, 2008 (73 FR 66554), effective December 10, 2008. Regulation 1142, Section 2—Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. Final rule published on June 4, 2010 (75 FR 31711), effective July 6, 2010. Correction notice done (for table) on June 10, 2010 (75 FR 32858). Note: Regulation 1142 was not referred to in DNREC's September 16, 2009 submittal as it was adopted by Delaware on October 14, 2009, effective November 11, 2009, and SIP approved on June 4, 2010. It is referred to in DNREC's December 9, 2010 supplemental submittal as another regulation imposing BACT level controls for PM2.5 precursors and SIP-approved by EPA.

maintenance in downwind States. EPA received significant comments on this rulemaking from the State of Delaware and others, and is in the process of reviewing those comments. As noted previously, DNREC submitted extensive comments and technical data to support its contention that the State of Delaware has been inappropriately named as a State that needs to be covered by the proposed Transport Rule FIP. EPA will be considering and responding to the comments submitted by Delaware on the proposed Transport Rule in the context of that rulemaking.

Delaware's December 9, 2010 supplemental technical analysis in support of its September 16, 2009 SIP revision includes information and data to support its assertion that the 2005 base year emission inventories that EPA used in its analysis of Delaware's contribution to downwind nonattainment and maintenance areas were flawed. Delaware asserts that the emissions inventories used by EPA were significantly higher than those Delaware submitted to EPA in its 2005 PEI. Delaware also asserts that EPA failed to consider emission reductions required by a number of Delaware rules that have been approved by EPA into the State SIP. In its supplemental technical analysis, Delaware contends, therefore, that EPA's projections of Delaware's 2012 emissions are inflated. If correct data had been used, Delaware asserts, the methodology used by EPA in the proposed Transport Rule FIP to identify States with emissions that significantly contribute to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in other States would demonstrate that Delaware has no such emissions. The DNREC also contends that if correct data were used, EPA's 2012 base case EGU SO_2 emissions projections would be lower than the SO_2 budgets EPA proposed to establish for EGUs in Delaware in the proposed Transport Rule FIP. In addition, DNREC contends EPA's Integrated Planning Model (IPM) 2012 EGU NO_X emission projections for Delaware are less than the NO_X budgets EPA proposed to establish for Delaware in the proposed Transport Rule FIP. For these additional reasons, DNREC argues EPA should not have proposed to include Delaware in the proposed Transport Rule FIP and should not include Delaware in the final Transport Rule FIP.

As stated previously, DNREC's October 1, 2010 comments on the proposed Transport Rule FIP, including its documentation of the corrections that it contends should be made to the 2005 emission inventories and the 2012 projection inventories for all sectors of $PM_{2.5}$ precursors, are in the docket for that proposed rulemaking (*see* Docket ID No. EPA–HQ–OAR–2009–0491) and form the basis for Delaware's conclusion that it should not be among the States covered by the final Transport Rule FIP. Copies of Delaware's September 16, 2009 SIP submittal and the entire technical analysis submitted by DNREC as a supplement to that SIP on December 9, 2010 are included in the docket for this proposed rulemaking (*see* Docket ID No. EPA–R03–OAR–2010–1027). That technical analysis also includes Delaware's documentation of the corrections that it contends should be made to the 2005 emission inventories and the 2012 projection inventories for all sectors of $PM_{2.5}$ precursors in support of its conclusion that it should not be among the States covered by the final Transport Rule FIP and that its September 16, 2009 SIP revision, as supplemented on December 9, 2010, should be approved as satisfying the section 110(a)(2)(D)(i)(I) infrastructure SIP requirement for the 2006 $PM_{2.5}$ NAAQS.

EPA is considering the comments it received on the August 2, 2010 proposed Transport Rule FIP including those from the State of Delaware. EPA is in the process performing additional modeling and making technical adjustments to its analyses pursuant to the comments received before promulgating the final Transport Rule FIP. Final determinations regarding which States are covered by the Transport Rule FIP and what reductions are necessary in the covered States will be made in the final Transport Rule FIP. Today's rulemaking proposes to approve and, in the alternative, proposes to disapprove Delaware's September 16, 2009 SIP submittal as supplemented on December 9, 2010. The final action on this SIP revision will take into consideration the results of the additional modeling performed and technical adjustments made by EPA pursuant to the comments received on the proposed Transport Rule FIP. Should EPA's updated modeling and the technical adjustments to our analyses lead us to conclude that the State of Delaware should not be subject to or covered by the final Transport Rule FIP, it is our intention to take final action to approve Delaware's September 16, 2009 SIP as supplemented on December 9, 2010. Should EPA's updated modeling and technical adjustments to our analyses for the Transport Rule lead us to conclude that even after consideration of all comments submitted by DNREC, the State of Delaware significantly contributes to nonattainment or interferes with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other State, it is EPA's intention to disapprove the September 16, 2009 SIP as supplemented on December 9, 2010.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Comments may be submitted as explained in the **ADDRESSES** portion of this proposed rulemaking notice.

V. Proposed Action

EPA is proposing to approve and, in the alternative, proposing to disapprove the portion of Delaware's SIP revision submitted on September 16, 2009 as supplemented on December 9, 2010 pursuant to the section 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS. The December 9, 2010 supplemental submittal is being considered under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its SIP. The final rulemaking action by EPA will occur only after the SIP revision supplement has been formally submitted to EPA for incorporation into the SIP.

As stated previously, if in the course of reviewing and preparing responses to the comments submitted on the proposed Transport Rule including those from DNREC, EPA's additional modeling and the adjustments made to its technical analyses indicate that the State of Delaware should not be subject to or covered by the final Transport Rule FIP, it is EPA's intention to take final action to approve DNREC's September 16, 2009 SIP submission for infrastructure element 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS as supplemented on December 9, 2010. Alternatively, if in the course of reviewing and preparing responses to the comments submitted on the proposed Transport Rule including those from DNREC, EPA's additional modeling and the adjustments made to its technical analyses indicate that Delaware should be subject to and covered by the final Transport Rule FIP, it is EPA's intention to take final action to disapprove Delaware's September 16, 2009 SIP submission for infrastructure element 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS as supplemented on December 9, 2010. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

Under section 179(a) of the CAA, final disapproval of a submittal that

addresses a requirement of a part D plan (42 U.S.C.A. sections 7501–7515) or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call) starts a sanctions clock. The provisions in the submittal were not submitted to meet either of those requirements. Therefore, any final EPA action to disapprove Delaware's September 16, 2009 section 110(a)(2)(D)(i)(I) submittal and the accompanying technical analysis, would not trigger any sanctions.

Any full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. If EPA were to conclude that the Delaware SIP revision discussed in this notice should be disapproved, the Transport Rule, when final, would be the FIP that EPA would intend to implement for the State.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 act on State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866, Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed action under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply proposes to approve and, in the alternative, proposes to disapprove certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed action under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply proposes to approve and, in the alternative, proposes to disapprove certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this proposed action does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to approve and, in the alternative, proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that 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." This proposed 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, as specified in Executive Order 13132, because it merely proposes to approve and, in the alternative, proposes to disapprove certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this proposed action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to approve and, in the alternative, proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the

regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed action under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply proposes to approve and, in the alternative, proposes to disapprove certain State requirements for inclusion into the SIP.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this proposed action is not subject to the requirements of Section 12(d) of 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 Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) 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. EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this proposed action on Delaware's September 16, 2009 SIP submission, as supplemented on December 9, 2010, to address 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS merely proposes to approve and, in the alternative, proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: January 6, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–907 Filed 1–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0881; FRL–9252–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of 8-hour Ozone Standard and Related Reference Conditions, and Update of Appendices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of adding the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.075 parts per million (ppm), related reference conditions, and updating the list of appendices under "Documents Incorporated by Reference." In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0881 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0881, Marilyn Powers, Acting 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 No. EPA–R03–OAR–2010–0881. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://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 *http://www.regulations.gov* or e-mail. The *http://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 e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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