

On the same day, the State Department published the proposed rule “International Traffic in Arms Regulations (ITAR): U.S. Munitions List Categories IV and XV” (89 FR 84482). The rule proposes to amend the International Traffic in Arms Regulations (ITAR) to revise U.S. Munitions List (USML) Categories IV and XV and related sections of the ITAR to clarify and standardize the regulatory text, add items that warrant designation on the USML, and remove those items that no longer warrant designation on the USML. The rule further proposes to add three new license exemptions to the ITAR.

### Public Briefing

On November 6, 2024, the Bureau of Industry and Security will host a public briefing to address the details of and answer questions on these related proposed rules and the final rules discussed elsewhere in this issue of the **Federal Register**. The Department of Commerce, the State Department, and other U.S. Government agencies, as appropriate, will participate in the public briefing. The public briefing will be held on November 6, 2024, at the Commerce Research Library of the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. The public briefing will begin at 1 p.m. EST and conclude at 3 p.m. EST.

### Procedure for Requesting Participation

To participate in the public meeting virtually or in-person, register at: [space.commerce.gov/export24](https://space.commerce.gov/export24) no later than November 1, 2024, to attend in person, or by November 5, 2024, for virtual participation. Note that due to space limitations, the capacity for in-person participation is limited. Once in-person capacity is reached, additional registrants will be directed to participate virtually. This web page will also display the agenda of the public meeting and any other necessary information. This web page will also display the agenda of the public meeting and any other necessary information.

### Procedure for Submitting Questions

In-person and virtual attendees are encouraged to submit written questions in advance of the briefing through the registration links at [space.commerce.gov/export24](https://space.commerce.gov/export24). Questions must be received by 5 p.m. EST on Monday, November 4, 2024. Note that while public questions will also be accepted during the public briefing if there is available time, written questions will be prioritized.

All questions and answers from the public meeting will be posted at [space.commerce.gov/export24](https://space.commerce.gov/export24) and at the Federal eRulemaking Portal at <http://www.regulations.gov> under the docket numbers BIS–2018–0029 or BIS 2024–0031. Related records are made accessible in accordance with the regulations published in 15 CFR part 4.

### Special Accommodations

For any special accommodation needs, please send an email to: [space.commerce@noaa.gov](mailto:space.commerce@noaa.gov).

**Matthew S. Borman,**

*Principal Deputy Assistant Secretary for Strategic Trade and Technology Security.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2023–0206; FRL–11037.1–02–R3]

### Air Plan Disapproval; Delaware; Removal of Excess Emissions Provisions; Proposed Correction

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

**ACTION:** Proposed action.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that a portion of an October 23, 2023, final disapproval action of a State implementation plan (SIP) revision submitted by the State of Delaware was in error and to make a correction pursuant to section 110(k)(6) of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before December 5, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0206 at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). 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, 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](https://www.epa.gov/dockets/commenting-epa-dockets).

### FOR FURTHER INFORMATION CONTACT:

General questions concerning this publication should be addressed to Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103; by telephone (215) 814–5511 or by email at [silverman.sean@epa.gov](mailto:silverman.sean@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. How is the preamble organized?

The information presented in this preamble is organized as follows:

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#### II. Background

This proposed action is to correct an error in an earlier EPA action, using the authority of section 110(k)(6) of the CAA. Section 110(k)(6) provides the EPA with explicit authority to correct errors in prior rulemaking actions:

Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.

Section 110(k)(6) of the CAA has been interpreted by courts as a “broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision.” *Ass’n of Irrigated Residents v. EPA*, 790 F.3d 934, 948 (9th Cir. 2015).

The EPA notes that this statutory provision provides the EPA with authority to make corrections to actions

on SIP submissions that are subsequently found to be in error. While CAA section 110(k)(6) provides the EPA with the authority to correct its own “error,” nowhere does this provision or any other provision in the CAA define what qualifies as “error,” and the EPA has used this explicit statutory authority on multiple occasions to correct various types of errors.<sup>1</sup>

The error at issue here occurred in an October 23, 2023, EPA action<sup>2</sup> disapproving revisions to the State of Delaware’s SIP which were submitted in response to the 2015 Startup, Shutdown, and Malfunction (SSM) SIP Action.<sup>3</sup> On June 12, 2015, the EPA finalized the 2015 SSM SIP Action, which clarified, restated, and updated the EPA’s national policy regarding SIP provisions applying to excess emissions during periods of startup, shutdown, and malfunction. As part of the 2015 SSM SIP Action, the EPA issued a finding that certain SIP provisions for 36 states that were applicable in 45 statewide and local jurisdictions were substantially inadequate to meet CAA requirements due to how those SIP provisions treated excess emissions during SSM periods. Further, the EPA issued a “SIP call” to each of those 45 air agencies, including the State of Delaware, on the basis that Delaware’s SIP contained impermissible director’s discretion provisions that were substantially inadequate to meet CAA requirements.<sup>4</sup> To respond to the EPA’s SIP call in the 2015 SSM SIP Action, each affected State was required to submit its corrective SIP revision by November 22, 2016. The State of Delaware submitted a SIP revision purporting to address the seven issues identified in EPA’s 2015 SSM SIP Action on November 22, 2016. On October 23, 2023, the EPA took final action<sup>5</sup> disapproving certain portions of Delaware’s November 22, 2016, SIP revision based on EPA’s finding that the SIP revision did not correct the remaining deficiencies in Delaware’s SIP identified by the 2015 SSM SIP Action.<sup>6</sup>

<sup>1</sup> See, e.g., 89 FR 76737 (September 19, 2024); 85 FR 57733 (September 16, 2020); 82 FR 14461 (March 21, 2017).

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

<sup>3</sup> State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

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

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

<sup>6</sup> EPA Region 3 issued two final actions that corrected three of Delaware’s seven deficient SIP

On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024). The case was a consolidated set of petitions for review of the EPA’s 2015 SSM SIP Action. The Court granted the petitions in part, vacating the SIP calls that were based on SIP provisions that included automatic exemptions, director’s discretion provisions, and “complete affirmative defenses” (*i.e.*, affirmative defenses that are functionally exemptions); and denied the petitions in part, affirming the SIP calls based on SIP provisions that included overbroad enforcement discretion provisions and affirmative defenses against specific relief. As a result of the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA*, certain portions of the EPA’s SIP call in the 2015 SSM SIP Action were vacated by the D.C. Circuit and therefore have no legal effect. Thus, certain states subject to the 2015 SSM SIP Action no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the deficiency identified in the SIP call.<sup>7</sup> In other words, by partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Delaware’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. As a result, the EPA is proposing to correct the EPA’s October 23, 2023, disapproval action with respect to the consequences of that disapproval.

### III. What is the EPA’s authority to correct errors in SIP rulemakings?

Section 110(k)(6) of the CAA provides the EPA with the authority to make corrections to actions on CAA implementation plans that are subsequently found to be in error. *Ass’n of Irrigated Residents v. EPA*, 790 F.3d at 948 (110(k)(6) is a “broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions”). The key provisions of section 110(k)(6) are that the Administrator has the authority to

provisions originally identified in EPA’s 2015 SSM SIP call. See 87 FR 41074 (July 11, 2022) and 88 FR 9399 (February 14, 2023). On October 23, 2023 (88 FR 72688), the EPA Region 3 finalized disapproval of Delaware’s SIP revision that sought to correct the remaining four deficient provisions.

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

“determine” that an action approving, disapproving, or promulgating a plan was “in error,” and when the Administrator does so, may then revise the action “as appropriate,” in the same manner as the prior action.<sup>8</sup> Moreover, CAA section 110(k)(6) “confers discretion on the EPA to decide if and when it will invoke the statute to revise a prior action.” *Ass’n of Irrigated Residents v. EPA*, F.3d at 948 (section 110(k)(6) grants the “EPA the discretion to decide when to act pursuant to the provision”). While CAA section 110(k)(6) provides the EPA with the authority to correct its own “error,” nowhere does this provision or any other provision in the CAA define what qualifies as “error.” Thus, the EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect, or wrong actions or mistakes.<sup>9</sup> Under CAA section 110(k)(6), the EPA must make an error determination and provide “the basis thereof.” There is no indication that this is a substantial burden for the EPA to meet. To the contrary, the requirement is met if the EPA clearly articulates the error and basis thereof. 790 F.3d at 948; see also 85 FR 73636, 73638 (November 19, 2020). The EPA’s error in the prior action disapproving Delaware’s SIP revision is discussed below.

### IV. What is the EPA proposing to correct?

In this action, the EPA is proposing to correct the erroneous triggering of mandatory sanctions under CAA section 179 and 40 CFR 52.31 for the State of Delaware following its October 23, 2023 (88 FR 72688), disapproval of Delaware’s SIP revision submitted in response to the 2015 SSM SIP call. The EPA is also proposing to correct the erroneous triggering of the EPA’s obligation to issue a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B). As discussed in section II of this document, the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA* vacated several portions of the 2015 SSM SIP call, rendering those portions as no longer having a legal effect. As a result, the states with provisions to which those vacated portions of the SIP call previously applied, including Delaware, no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the identified deficiency. As such, the SIP revision submitted by Delaware on November 22, 2016, is no

<sup>8</sup> See 85 FR 73636, 73637 (November 19, 2020).

<sup>9</sup> See 85 FR 73637–38 (November 19, 2020).

longer considered a mandatory submission; EPA is therefore proposing to find that the EPA's October 23, 2023 (88 FR 72688), disapproval action should not trigger imposition of mandatory sanctions under CAA section 179 and 40 CFR 52.31 or a FIP obligation under CAA 110(c)(1)(B). The EPA notes that it is not proposing to correct the merits of the October 23, 2023 disapproval nor is it withdrawing that disapproval action—the EPA does not believe that the substantive basis for the disapproval as explained in that final action was erroneous; rather, the EPA is proposing to find that because the SIP submittal itself is no longer mandatory following the D.C. Circuit's partial vacatur, the triggering of sanctions under section 179 and 40 CFR 52.31, and the triggering of the EPA's FIP obligation under 110(c)(1)(B), was in error. Therefore, if the EPA finalizes this error correction action as proposed, the imposition of sanctions for the State of Delaware and the FIP obligation for the EPA that were triggered as result of the October 23, 2023 (88 FR 72688), final disapproval action would no longer be in effect.

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

As a result of the D.C. Circuit's decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is proposing to determine that, pursuant to section 110(k)(6) of the CAA, a portion of the EPA's October 23, 2023 (88 FR 72688), final disapproval action of Delaware's SIP revision was in error with respect to the consequences of that disapproval. By partially vacating the EPA's 2015 SSM SIP Action, the D.C. Circuit's decision rendered Delaware's SIP submission in response to the 2015 SSM SIP action voluntary rather than mandatory. Thus, the EPA is proposing to find that the triggering of mandatory sanctions and FIP obligation following the October 23, 2023 (88 FR 72688), final disapproval was erroneous and, through this action, is proposing to terminate the imposition of sanctions for the State and the FIP obligation for the EPA triggered by that disapproval as they are no longer legally valid.

#### V. Statutory and Executive Order Reviews

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve State choices, provided that they meet the criteria of the CAA. This action merely corrects an error in EPA's prior action and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is an error correction taken under section 110(k)(6) of the CAA and does not directly or disproportionately affect children.
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse

human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action as the EPA views this action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SIP call. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

**Adam Ortiz,**

*Regional Administrator, EPA Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R09–OAR–2024–0339; FRL–12125–01–R9]

### Air Plan Approval; Arizona; Yuma 2015 8-Hour Ozone Nonattainment Area; Redesignation Request and Maintenance Plan

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