

*N. Required Determinations Under the Administrative Procedure Act*

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b). Under 553(b), we find that prior notice and comment are unnecessary and would be contrary to the public interest. This rule is necessary to ensure that these tribes have courts to administer justice on land under their jurisdiction. Prior notice and comment are unnecessary and would be contrary to the public interest because access to judicial process may be impeded or interrupted to a degree that the governmental function of providing justice for all tribal members is impaired.

As allowed under 5 U.S.C. 553 (d)(3), the effective date of this rule is the date of publication in the **Federal Register**. Good cause for an immediate effective date exists because the delay in publishing this rule would inhibit access to justice for tribal members and likely obstruct speedy trial rights for members of those tribes seeking to come under the jurisdiction of CFR Courts, and would diminish the sovereign right of those tribes to establish their own tribal courts and to assume personal and subject-matter jurisdiction now asserted by CFR Courts.

We have requested comments on this interim final rule. We will review any comments received and, by a future publication in the **Federal Register**, address any comments received and either confirm the interim final rule with or without change or initiate a proposed rulemaking.

**List of Subjects in 25 CFR Part 11**

Courts, Indians-law.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 11 in Title 25 of the Code of Federal Regulations as follows:

**PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE**

- 1. The authority for part 11 continues to read as follows:

**Authority:** 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

- 2. Revise § 11.100 to read as follows:

**§ 11.100 Where are Courts of Indian Offenses established?**

(a) Unless indicated otherwise in this title, these Courts of Indian Offenses are established and the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151 and by

Federal court precedent) occupied by the following tribes:

(1) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital, and the Albuquerque Indian School Property (land held in trust for the 19 Pueblos of New Mexico);

(2) Skull Valley Band of Goshutes Indians (Utah);

(3) Te-Moak Band of Western Shoshone Indians (Nevada);

(4) Tribes located in the former Oklahoma Territory (Oklahoma) that are listed in paragraph (b) of this section;

(5) Tribes located in the former Indian Territory (Oklahoma) that are listed in paragraph (c) of this section;

(6) Ute Mountain Ute Tribe (Colorado); and

(7) Winnemucca Indian Tribe.

(b) This part applies to the following tribes located in the former Oklahoma Territory (Oklahoma):

(1) Apache Tribe of Oklahoma;

(2) Caddo Nation of Oklahoma;

(3) Comanche Nation (except Comanche Children's Court);

(4) Delaware Nation;

(5) Fort Sill Apache Tribe of Oklahoma;

(6) Kiowa Indian Tribe of Oklahoma;

(7) Otoe-Missouria Tribe of Indians;

and

(8) Wichita and Affiliated Tribe of Indians.

(c) This part applies to the following tribes located in the former Indian Territory (Oklahoma):

(1) Eastern Shawnee Tribe of Oklahoma;

(2) Modoc Tribe of Oklahoma;

(3) Ottawa Tribe of Oklahoma;

(4) Peoria Tribe of Indians of Oklahoma; and

(5) Seneca-Cayuga Tribe of Oklahoma.

Dated: February 21, 2013.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

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**BILLING CODE 4310-6W-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2010-0141; FRL-9786-4]

**Approval and Promulgation of Air Quality Implementation Plans; Delaware; the 2002 Base Year Emissions Inventory for the Delaware Portion of the Philadelphia Nonattainment Area for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standard**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Delaware State Implementation Plan (SIP) submitted by the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC) on April 3, 2008. The SIP revision pertains to the 2002 base year emissions inventory for the Delaware portion of the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment area. The 2002 base year emissions inventory was submitted to meet nonattainment requirements related to the Delaware nonattainment area for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). EPA is approving the 2002 base year emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 3, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0141. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by email at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 19, 2012 (77 FR 69399), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the 1997 annual PM<sub>2.5</sub> attainment demonstration, analysis of reasonably available control measures (RACM) and reasonably available control technology (RACT), the 2002 base year emissions

inventory, contingency measures, and the motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for New Castle County in Delaware. In this final rulemaking action, EPA is only taking final action on the 2002 base year emissions inventory portion of the November 19, 2012 NPR. EPA will be taking separate action on the remainder of the NPR which includes the approval of Delaware's SIP revision for the attainment demonstration, the analysis of RACM/RACT, contingency measures, and MVEBs.

## II. Summary of SIP Revision

The PM<sub>2.5</sub> 2002 base year emissions inventory submitted by DNREC on April 3, 2008 for the State of Delaware includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOCs), PM<sub>2.5</sub>, coarse particles (PM<sub>10</sub>), ammonia (NH<sub>3</sub>), and sulfur dioxide (SO<sub>2</sub>). Discussions of the emissions inventory development as well as the emissions inventory can be found in the April 3, 2008 SIP submittal, a technical support document, and in the NPR available on line at [www.regulations.gov](http://www.regulations.gov), Docket No. EPA-R03-OAR-2010-0141. EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by DNREC. EPA found the process used to develop this emissions inventory for Delaware is adequate and meets the requirements of section 172(c)(3) of the CAA and EPA guidance for emission inventories. Specific requirements of the 2002 base year emissions inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the portion of the NPR relating to the 2002 base year emissions inventory.

## III. Final Action

EPA is approving the 2002 base year emissions inventory for the 1997 annual PM<sub>2.5</sub> NAAQS as a revision to the Delaware SIP.

## IV. Statutory and Executive Order Reviews

### A. General Requirements

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 action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule 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.

### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the Delaware 2002 base year emissions inventory for the 1997 annual PM<sub>2.5</sub> NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2013.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

### Subpart I—Delaware

- 2. In § 52.420, the table in paragraph (e) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) standard to read as follows:

#### § 52.420 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2002 Base Year Emissions Inventory for the 1997 annual fine particulate matter (PM <sub>2.5</sub> ) standard.	Delaware-Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware nonattainment area.	4/3/08	3/4/13 [Insert page number where the document begins].	52.423(c)

■ 3. § 52.423 is amended by adding paragraph (c) to read as follows:

**§ 52.423 1990 Base year emissions inventory.**

(c) EPA approves as a revision to the Delaware State Implementation Plan for the 2002 base year emissions inventory for the Delaware 1997 annual fine particulate matter (PM<sub>2.5</sub>) nonattainment area submitted by the Delaware Department of Natural Resources and Environmental Control on April 3, 2008. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOCs), PM<sub>2.5</sub>, coarse particles (PM<sub>10</sub>), ammonia (NH<sub>3</sub>), and sulfur dioxide (SO<sub>2</sub>).

[FR Doc. 2013-04810 Filed 3-1-13; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R5-ES-2013-0035; FXES1113090000C6-134-FF09E30000]

RIN 1018-AZ31

#### Endangered and Threatened Wildlife and Plants; Reinstatement of Removal of the Virginia Northern Flying Squirrel From the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that has the effect of reinstating the removal of the Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*) from the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973 (ESA), as amended. Pursuant to the District of

Columbia District Court of Appeals order dated August 17, 2012, and mandate dated November 13, 2012, this rule again removes the Virginia northern flying squirrel from the List of Endangered and Threatened Wildlife.

**DATES:** This action is effective March 4, 2013.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov>. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Call (304) 636-6586 to make arrangements.

**FOR FURTHER INFORMATION CONTACT:** Deborah Carter, Project Leader, at our West Virginia field office (see **ADDRESSES**) or telephone (304) 636-6586, extension 12. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 26, 2008, we published a final rule to remove ESA protections for the Virginia northern flying squirrel, more commonly known as the West Virginia northern flying squirrel (WVNFS) (73 FR 50226). Additional background information on the WVNFS, including previous Federal actions, can be found in our August 26, 2008, final rule, <http://www.regulations.gov> in Docket No. FWS-R5-ES-2011-0035, or at <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A09R>.

A lawsuit challenging our final rule was filed in U.S. District Court for the District of Columbia. On March 25, 2011, the U.S. District Court for the District of Columbia vacated and set aside our 2008 delisting rule (*Friends of Blackwater, et al. v. Salazar, et al.*, 772 F.Supp. 2d 232 (D.D.C. 2011)). On May 20, 2011, the Department of Justice on behalf of the Service appealed the District Court's decision to the U.S. Court of Appeals for the District of Columbia Circuit. Pending the appeal, and consistent with the District Court's March 25, 2011, order, we published a final rule reinstating ESA protections for

the WVNFS (76 FR 35349, June 17, 2011).

On August 17, 2012, the U.S. Court of Appeals, in a two-to-one opinion, reversed the ruling of the U.S. District Court (*Friends of Blackwater, et al. v. Salazar, et al.*, 691 F.3d 428 (DC Cir. 2012)). On September 28, 2012, Friends of Blackwater *et al.* petitioned the U.S. Court of Appeals for a rehearing and a rehearing en banc, which were both denied on November 1, 2012 (*Friends of Blackwater, et al. v. Salazar, et al.*, DC Cir., No: 11-5128). On November 13, 2012, the U.S. Court of Appeals issued its mandate consistent with its August 17, 2012, opinion reversing the U.S. District Court's vacatur of the WVNFS delisting rule. On January 30, 2013, Friends of Blackwater *et al.*'s time to file a petition for a writ of certiorari with the U.S. Supreme Court expired.

#### Administrative Procedure

This rulemaking is necessary to comply with the August 17, 2012, court order and November 13, 2012, mandate. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication.

#### Effects of the Rule

As of the publication of this rule, the WVNFS is again removed from the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Therefore, this species will no longer receive Federal protection under the ESA. This rule will not affect the status of the WVNFS under State law or suspend any other legal protections provided by State law.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

To comply with the court order and mandate discussed above, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below: