

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 6 hours that would prohibit entry within a relatively small portion of Betsie Lake. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0595 to read as follows:

§ 165.T09–0595 Safety Zone; Ironman Michigan, Frankfort, MI.

(a) *Location.* All waters of Betsie Lake in the vicinity of a triangular shaped race course enclosed by the following three coordinates: 44°37.80' N, –086°13.91' W to 44°37.81' N, –086°14.22' W to 44°37.58' N, –086°13.75' W, then back to the starting point.

(b) *Enforcement period.* The safety zone described in paragraph (a) would be effective on September 11, 2022 from 6 a.m. through 12 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The “designated representative” of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during the marine event must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: August 30, 2022.

Joseph B. Parker,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2022–19590 Filed 9–9–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0631; FRL–9125–02–R2]

Air Plan Disapproval; New York and New Jersey; Interstate Transport Infrastructure SIP Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is disapproving State Implementation Plan (SIP) submissions from New York and New Jersey addressing interstate transport for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The “good neighbor” or “interstate transport” provision of the Clean Air Act (CAA) requires that each state’s SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader “infrastructure” requirements, which are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA.

DATES: This final rule is effective on October 12, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2021–0631. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Kenneth Fradkin, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: The supplementary information section is arranged as follows:

Table of Contents

- I. What is the background for this action?
- II. What comments were received in response to the EPA’s proposed action?
- III. What action is the EPA taking?
- IV. What are the consequences of a disapproved SIP?
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

On November 3, 2021, the EPA published a Notice of Proposed Rulemaking (NPRM) that proposed to disapprove State Implementation Plan (SIP) submissions from New York and New Jersey pertaining to the

requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. 86 FR 60602.

Section 110(a) of the CAA imposes an obligation upon states to submit SIP submissions, also referred to as revisions or submittals, that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP as the “infrastructure” SIP because the SIP ensures that states can implement, maintain, and enforce the air standards. Within these requirements, CAA section 110(a)(2)(D)(i)(I) contains requirements to address interstate transport of NAAQS pollutants or their precursors. CAA section 110(a)(2)(D)(i)(I), which is also known as the “good neighbor” provision, requires SIPs to contain provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment of the NAAQS in any other state (commonly referred to as prong 1) or interfere with maintenance of the NAAQS in any other state (prong 2). A SIP revision submitted under this provision is often referred to as an “interstate transport SIP” or a good neighbor SIP.

New York submitted its good neighbor SIP revision to the EPA for the 2008 ozone NAAQS on September 25, 2018.¹ New Jersey submitted a SIP revision, which also addressed the good neighbor provision for the 2008 ozone NAAQS, on May 13, 2019. For the reasons stated in the proposal for this action, the EPA is disapproving these SIP submissions from New York and New Jersey regarding the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA) for the 2008 ozone NAAQS.

II. What comments were received in response to the EPA’s proposed action?

The EPA received comments during the public comment period on our proposed action from the New Jersey Department of Environmental Protection (NJDEP), the State of Pennsylvania’s Department of Environmental Protection

(PADEP), and the Midwest Ozone Group (MOG). A synopsis of the comments and our responses are below. The complete comments may be viewed under Docket ID No. EPA–R02–OAR–2021–0631 on the <https://www.regulations.gov> website.

Comment 1: NJDEP stated that New Jersey’s rules, such as its High Electric Demand Day (HEDD) rule, the 2017 New Jersey rule for stationary natural gas compressor engines and turbines, and other rules implemented for both Electric Generating Unit (EGU) sources and non-EGU sources, are more stringent than nearby and upwind states and were implemented well ahead of the 2021 Serious attainment date for the 2008 NAAQS. New Jersey asserts that it is being penalized for early action.

Response 1: Although New Jersey’s existing control measures may be more stringent than nearby states’ controls and were implemented prior to the 2021 Serious classification attainment date for the 2008 NAAQS, the EPA does not find that the existence of those rules alone satisfies New Jersey’s 2008 ozone good neighbor obligations. New Jersey did not evaluate the availability of additional air quality controls to improve downwind air quality at nonattainment and maintenance receptors, even though New Jersey itself acknowledged it potentially significantly contributed above the 1 percent of the standard threshold to 14 receptors.

The EPA’s updated modeling used for evaluating interstate transport with respect to the 2008 ozone NAAQS (2016v1 emissions platform based modeling) accounted for the emission reductions from the controls listed in the SIP—including New Jersey’s HEDD, the 2017 New Jersey rule for stationary natural gas compressor engines and turbines, and other State rules—and nonetheless continued to project that New Jersey would contribute to downwind air quality problems above 1 percent of the 2008 ozone NAAQS. Under the 4-step framework, this triggered a need to assess additional emissions control opportunities at Step 3.

As explained in the EPA’s November 3, 2021 NPRM, the EPA’s modeling projects that New Jersey contributes well above the air quality threshold of 1 percent of the 2008 ozone NAAQS (0.75 parts per billion, “ppb”) to several projected downwind nonattainment or maintenance receptors. The EPA’s modeling projects that New Jersey contributes up to 8.62 ppb to downwind receptors, and 5.71 ppb to downwind maintenance receptors in Connecticut,

both of which greatly exceed the threshold contribution level of 0.75 ppb.

The State is not being “penalized” for early action. Whether New Jersey’s measures are more stringent, or implemented earlier, than neighboring states is not relevant to EPA’s determination regarding the adequacy of New Jersey’s good neighbor SIP submission. The EPA’s role in reviewing infrastructure SIP submissions is to ensure that the state’s plan complies with the statute. With respect to prongs 1 and 2 of CAA section 110(a)(2)(D)(i), the EPA has reviewed New Jersey’s demonstration and determined, for the reasons stated in the NPRM, it does not adequately demonstrate that the State’s good neighbor plan is sufficient to ensure that emissions from the State will not significantly contribute to nonattainment or interfere with maintenance.

Comment 2: NJDEP notes that the EPA’s proposal states that a SIP revision could replace the Federal Implementation Plan (FIP) promulgated in the Revised CSAPR Update if the State’s SIP could demonstrate enforceable emission control measures that achieve at least the same amount of emissions reductions achieved by the FIP. NJDEP states that its 2017 NO_x emissions inventory indicates that 79% of the state’s annual NO_x emissions are from mobile sources, while EGUs make up 3%, and point sources up to 14%. The State concludes that this reflects the extensive control measures implemented in New Jersey, as well as that EGUs located in New Jersey are well controlled. NJDEP further states that the EPA should consider the many control measures implemented by New Jersey before requiring additional reductions from a source sector that is already well controlled, and a small portion of statewide NO_x emissions. New Jersey asserts that the EPA should rescind the disapproval and approve New Jersey’s Good Neighbor SIP. New Jersey further states that the EPA should also implement federal mobile source measures, to address the major contributor in New Jersey.

Response 2: As noted in the EPA’s NPRM, the EPA determined in the Revised CSAPR Update that additional NO_x emissions reductions, relative to the CSAPR Update, are available and necessary to eliminate New Jersey’s significant contribution for the good neighbor provision under the 2008 ozone NAAQS. New Jersey’s NO_x ozone season emissions budget for the State’s EGUs as determined under the Revised CSAPR Update is 1,253 tons in 2021 and subsequent years. The EPA has determined that the emissions

¹ The New York State Department of Environmental Conservation indicated in their September 25, 2018, SIP submission that the submittal was to address the EPA’s August 26, 2016, disapproval of a portion of New York’s April 4, 2013 submittal addressing the good neighbor provision for the 2008 ozone NAAQS. See the NPRM for this action at 86 FR 60602 (November 3, 2021).

reductions achieved as a result of the Group 3 NO_x ozone season emissions budget are necessary to eliminate New Jersey's significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states.

As noted in the November 3, 2021, NPRM, as well as the Revised CSAPR Update, a state can submit a SIP revision to replace the FIP, which implements the state's NO_x ozone season emissions budget, if the SIP is approved by the EPA and achieves the necessary emissions reductions even if it does not use the CSAPR NO_x Ozone Season Group 3 Trading Program. 86 FR 60610–60611; 86 FR 23147–23148.² The EPA would evaluate the transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emissions reductions (*i.e.*, reductions equal to or greater than the Group 3 trading program) will be achieved. In order to best ensure its approvability, the SIP revision should include the following general elements: (1) a comprehensive baseline 2021 statewide NO_x emissions inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that the EPA used to calculate the required state budget in the Revised CSAPR Update (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emissions reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such NO_x controls during the ozone season; (4) for EGUs greater than 25 MWe (megawatt electrical), monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (see 40 CFR part 51 subpart K (“source surveillance”) requirements); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emissions reductions in time to meet the next compliance deadline.³

² For further information on replacing a FIP with a SIP, see the discussion in the final CSAPR rulemaking (76 FR 48326).

³ See 86 FR 23054, 23147–23148 (April 30, 2021) (describing expected elements needed to replace a Revised CSAPR Update FIP). In addition, should a state wish to adopt the Group 3 trading program itself into its SIP, EPA regulations address replacing the Revised CSAPR Update FIP with a Revised CSAPR Update SIP at 40 CFR 52.38(b)(12).

New Jersey has not submitted, nor has the EPA approved, a SIP revision that provides adequate and enforceable provisions ensuring that emission reductions equal to or greater than the Group 3 trading program will be achieved. Merely indicating the percentage of annual NO_x emissions from mobile, EGU, and point sources in the State of New Jersey does not demonstrate that necessary emission reductions have been sufficiently achieved as reflected by the state-level, seasonal emissions budget established for New Jersey in the Revised CSAPR Update.

Despite NJDEP's claim that the State's 2017 NO_x emission inventory demonstrates that EGUs are well controlled, the EPA's analysis performed for the Revised CSAPR Update did find that additional cost-effective controls were available for EGUs in New Jersey.

NJDEP has not adequately demonstrated that the State's plan is sufficient to ensure that New Jersey emissions will not significantly contribute to nonattainment or interfere with maintenance in other states. As such, the EPA must disapprove New Jersey's SIP submission for failing to satisfy the statutory requirements of CAA section 110(a)(2)(D)(i)(I).

In its comments to the EPA, NJDEP further states that the EPA should also implement federal mobile source measures. The EPA has been regulating mobile source emissions since it was established as a federal agency in 1970 and is committed to continuing the effective implementation and enforcement of current mobile source emissions standards. The EPA believes that the NO_x reductions from its federal programs are an important reason for the historical and long-running trend of improving air quality in the United States. The trend helps explain why the overall number of receptors and severity of ozone nonattainment problems under the 2008 ozone NAAQS have declined. As a result of this long history, NO_x emissions from on road and nonroad mobile sources have substantially decreased (78 percent and 62 percent since 2002, for on road and nonroad, respectively)⁴ and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the most recent, stringent standards replace older vehicles and engines.⁵

⁴ US EPA. Our Nation's Air: Status and Trends Through 2021. <https://gispub.epa.gov/air/trendsreport/2022/#home>.

⁵ National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform.

On March 28, 2022, the EPA proposed new standards for emissions from heavy-duty vehicles for model years 2027 and beyond.⁶ If finalized, the proposed standards would significantly reduce NO_x emissions from heavy-duty gasoline and diesel engines and set more stringent greenhouse gas (GHG) standards for certain commercial vehicle categories. This proposal is consistent with President Biden's Executive Order 14037, “Strengthening American Leadership in Clean Cars and Trucks,”⁷ and would ensure the heavy-duty vehicles and engines that drive American commerce are as clean as possible while charting a path to advance zero-emission vehicles in the heavy-duty fleet.

Comment 3: PADEP is supportive of the proposed disapproval of New York's and New Jersey's SIP submissions to address the requirements of 110(a)(2)(D)(i)(I). PADEP notes that New Jersey contributes at roughly twelve times the one percent significant contribution threshold for the 2008 ozone NAAQS, and New York contributes almost twenty times the significant contribution threshold for the 2008 ozone NAAQS, to downwind receptors in Connecticut.

PADEP states that because of New York and New Jersey's close proximity to Connecticut, their emissions generate more pollution contributions to Connecticut's monitors than other states. Additionally, PADEP asserts that New York and New Jersey could still make overall low-cost ozone reductions on a “part per billion” basis to address nonattainment at Connecticut monitors for the 2008 ozone NAAQS. PADEP notes that as part of EPA's analysis in the proposed disapproval, the EPA finds that New York and New Jersey fail to address the Revised CSAPR Update's benefits in their SIPs. Additionally, PADEP states that the EPA should consider cost effectiveness based upon the magnitude of the direct ozone reduction when reviewing New York's and New Jersey's Good Neighbor SIP obligations due to their large impact and proximity to Connecticut's nonattainment areas.

PADEP also notes the large contributions from New York and New Jersey for the 2015 ozone NAAQS to Pennsylvania.

Response 3: The EPA acknowledges the commenter's support of the EPA's proposed rule disapproving New York and New Jersey SIP submissions

Retrieved from <https://views.cira.colostate.edu/wiki/wiki/10202>.

⁶ 87 FR 17414 (March 28, 2022).

⁷ 86 FR 43583 (August 10, 2021).

pertaining to the requirements of 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. The EPA's proposed action was limited to determining whether New York and New Jersey SIP submissions adequately address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. As evidenced by this disapproval action, EPA has concluded that the New York and New Jersey SIP submissions do not adequately address the requirements of CAA section 110(a)(2)(D)(i)(I). PADEP's comments characterizing the nature of interstate transport between New York, New Jersey, and Connecticut do not alter EPA's conclusion. Additionally, the Revised CSAPR Update was not opened for reconsideration in this action. Comments on the Revised CSAPR Update were previously responded to in the final notice and docket for that rulemaking. 86 FR 23054 (April 30, 2021).⁸ Lastly, the EPA considers the portions of the PADEP comment regarding the 2015 ozone NAAQS to be outside the scope of this action, which is only related to the 2008 ozone NAAQS.

Comment 4: The Midwest Ozone Group (MOG) submitted comments that urge the EPA to require New York to impose emission controls for Simple Cycle Combustion Turbines (SCCTs) units by 2021, instead of the 2023–2025 period as specified in an EPA-approved New York regulation.

MOG states that the EPA's disapproval of New York's good neighbor SIP is based upon the recognition that New York did not demonstrate that it was adequately controlling its emissions, with New York conceding that its emissions were linked to Connecticut nonattainment areas. Furthermore, MOG states that the EPA indicates that New York's regulation for SCCTs will not be phased in until the 2023–2025 period, even though the applicable serious nonattainment deadline is July 20, 2021.

Accordingly, MOG asserts, the EPA ignored good neighbor caselaw by approving New York SCCT controls in a separate action (86 FR 43956 (August 11, 2021)) when those controls would not be required until the 2023–2025 period.

MOG alleged that the delay in NO_x emission reductions from New York's SCCTs are impacting nonattainment and downwind areas as well as affecting upwind states through what they allege to be inappropriate regulation under the Revised CSAPR Update. MOG's

comment letter also included Exhibit A, MOG's December 14, 2020 comment letter to the EPA regarding the proposal of the Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS. Exhibit A made similar comments regarding New York's SCCT rule, including MOG's assertion of the need for the EPA to address New York's failure to impose controls under that rule by 2021.

MOG requests that EPA exercise its authority, pursuant to CAA Section 110(k)(5), to require New York to revise its SIP to impose controls on SCCT units by the 2008 ozone attainment date of 2021. Additionally, MOG argues, the EPA must recognize and determine that New York's failure to impose SCCT controls by 2021 constitutes a failure by New York as both an upwind and downwind state to harmonize its attainment date obligations with respect to the 2008 ozone NAAQS.

Response 4: It is not readily apparent from the comment if MOG supports or opposes EPA's proposal to disapprove New York's 2008 ozone NAAQS good neighbor SIP submission. The EPA proposed to disapprove New York's good neighbor SIP submission based on the deficiencies as described in the November 3, 2021, NPRM. Outside of that rationale, the EPA noted for informational purposes that some controls identified in New York's 2008 ozone NAAQS good neighbor SIP submission as *in development* as of the date New York submitted the good neighbor submission in 2018 to EPA were later adopted by the State and approved by the EPA, including the SCCT controls, which are the focus of MOG's comment. However, New York's SCCT controls were not included by New York in the submission under EPA review in this action, nor was the prior approval of the SCCT controls (approved by the EPA as a SIP strengthening measure) reopened for consideration by the Agency in this action. The EPA previously responded to MOG's comments on the need for faster implementation of the SCCT controls in the notice for that separate final action. 86 FR 43956, 43957–43958 (August 11, 2021). Therefore, MOG's comments related to New York's SCCT controls are outside the scope of this action, which is determining only that New York's 2018 submission does not satisfy the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

MOG stated it "incorporated" its comments on the Revised CSAPR Update into its comments on this action. However, the Revised CSAPR Update was not reopened for consideration in

this action. Certain MOG comments question whether the Revised CSAPR Update is a lawful and complete remedy to resolve certain states' interstate transport obligations for the 2008 ozone NAAQS. Those issues were appropriately addressed in the Revised CSAPR Update rulemaking, and there is no need to revisit those issues in order to find New York's transport submittal is not approvable in this action. The EPA previously responded to MOG's comments on the Revised CSAPR Update in the final notice and docket for that rulemaking. 86 FR 23054 (April 30, 2021).⁹ MOG's legal challenge to the Revised CSAPR Update is currently pending in the U.S. Court of Appeals for the District of Columbia. *MOG v. EPA et al.*, No. 21–1146 (D.C. Cir.).

The EPA also finds MOG's suggestion to issue a SIP Call to New York to modify its infrastructure SIP under CAA section 110(k)(5) irrelevant to the final determination made in this action, which is that New York's 2008 ozone NAAQS good neighbor SIP submission does not satisfy the requirements of CAA section 110(a)(2)(D)(i)(I).

III. What action is the EPA taking?

The EPA is disapproving the portion of the New York and New Jersey SIP submittals pertaining to the requirements of CAA section 110(a)(2)(D)(i)(I) regarding interstate transport of air pollution (prongs 1 and 2) that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

IV. What are the consequences of a disapproved SIP?

Disapproval does not start a mandatory sanctions clock pursuant to CAA section 179 because this action does not pertain to either a part D plan for nonattainment areas required under CAA section 110(a)(2)(I), or a SIP call pursuant to CAA section 110(k)(5). The EPA has amended FIPs, in a separate action finalizing the Revised CSAPR Update for the 2008 ozone NAAQS, to reflect the additional emissions reductions necessary to address New York's and New Jersey's significant contribution to nonattainment and interference with maintenance. Therefore, this action does not trigger a duty for the EPA to promulgate FIPs for either New York or New Jersey.

⁸Docket No. EPA–HQ–OAR–2020–0272. Available at <https://www.regulations.gov>.

⁹Docket No. EPA–HQ–OAR–2020–0272. Available at <https://www.regulations.gov>.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act (PRA)

This 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 disapproval of SIP revisions under CAA section 110 will not create any new information collection burdens but simply proposes to disapprove certain State requirements for inclusion into the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under CAA section 110 will not create any new requirements but simply proposes to disapprove certain State requirements, for inclusion into the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no 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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action 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 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 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 simply disapproves certain state requirements for inclusion into the SIP.

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

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action merely disapproves certain state requirements for inclusion into the SIP.

K. Congressional Review Act (CRA)

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. The 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).

L. 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 November 14, 2022. 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 may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart FF—New Jersey

■ 2. Section 52.1586 is amended by revising paragraph (b)(2) to read as follows:

§ 52.1586 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) * * *

(2) *Disapproval.* (i) Submittal from New Jersey dated October 17, 2014, to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO₂, 2010 SO₂, 2012 PM_{2.5}, 2006 PM₁₀ and 2011 CO NAAQS is disapproved for (D)(i)(II) prong 3 (PSD program only). These requirements are being addressed by § 52.1603 which has been delegated to New Jersey to implement.

(ii) New Jersey SIP revision submitted on May 13, 2019, to address requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 8-hour ozone NAAQS is disapproved. These requirements are being addressed by § 52.1584.

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Subpart HH—New York

■ 3. Section 52.1683 is amended by adding paragraph (u) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(u) The SIP revision submitted on September 25, 2018, addressing Clean Air Act section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 ozone NAAQS is disapproved. These requirements are being addressed by § 52.1684.

[FR Doc. 2022–19645 Filed 9–9–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R03–OAR–2021–0855; FRL–8941–02–R3]****Air Plan Approval; Virginia; Negative Declaration Certification for the 2015 Ozone National Ambient Air Quality Standard for the 2016 Oil and Natural Gas Control Techniques Guidelines****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The revision provides Virginia's determination for the 2015 Ozone national ambient air quality standards (NAAQS), via a negative declaration, that there are no sources within the Northern Virginia volatile organic compound (VOC) Emissions Control Area subject to EPA's 2016 Oil and Natural Gas control techniques guidelines (2016 Oil and Gas CTG). The negative declaration covers only the 2016 Oil and Gas CTG and asserts that there are no sources subject to this CTG located in the Northern Virginia VOC Emissions Control Area. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 12, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0855. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., 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 through // www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, 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. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at Devkota.om@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On June 27, 2022 (87 FR 38046), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision provides Virginia's determination for the 2015 Ozone NAAQS, via a negative declaration, that there are no sources within the Northern Virginia VOC Emissions Control Area subject to EPA's 2016 Oil and Gas CTG. The 2016 Oil and Gas CTG provides information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for VOC emissions from select oil and natural gas industry emission sources. Section 182(b)(2)(A) of the CAA requires that for ozone nonattainment areas classified as Moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Section 184(b)(1)(B) of the CAA extends this requirement to states and areas in the Ozone Transport Region (OTR). The term “negative declaration” means that the State has explored whether any facilities meeting the applicability requirements of the CTG exist within the State and concluded that there are no such sources. The negative declaration covers only the 2016 Oil and Gas CTG and asserts that there are no sources subject to this CTG located in the Northern Virginia VOC Emissions Control Area. The formal SIP revision was submitted by Virginia on August 9, 2021. States with no applicable sources for a specific CTG may submit as a SIP revision a negative declaration stating that there are no applicable sources in the state.

II. Summary of SIP Revision and EPA Analysis

The Northern Virginia area consisting of Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City is in the OTR and is subject to this 2016 Oil and Natural Gas CTG. According to Virginia's August 9, 2021 submittal, VADEQ conducted a review of potential sources subject to the 2016 Oil and Gas CTG and found that there are no sources located in the Northern Virginia area subject to the terms of this CTG for purposes of the 2015 ozone NAAQS. Notwithstanding VADEQ's finding that there are no VOC sources in the Northern Virginia area subjected to RACT by the 2016 Oil and Gas CTG, VADEQ identified facilities in Northern Virginia defined by the 2016 Oil and Gas CTG as part of the oil and natural gas industry. Specifically, VADEQ identified certain natural gas compressor stations in the Northern Virginia area, but determined that these are “downstream” of the point of custody transfer to the natural gas transmission and storage segment. Compressor stations located in the transmission and storage segment of the oil and gas industry are not subject to any RACT requirements specified by the 2016 Oil and Gas CTG.

Other specific requirements of Virginia's negative declaration certification for the 2016 Oil and Natural Gas CTG for the 2015 Ozone NAAQS and the rationale for EPA's proposed action are explained in the NPRM, and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the Negative Declaration Certification for the 2016 Oil and Natural Gas Control Techniques Guidelines for the 2015 Ozone NAAQS as a revision to the Virginia SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to