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).

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 6, 2018. 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* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 8, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

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.*

■ 2. Section 52.2570 is amended by revising paragraph (c)(113)(i)(D), and by adding paragraph (c)(137) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(113) * * *

(i) * * *

(D) NR 400.02(73m) and (131m), 406.02(1) and (2), 406.04(2m), NR 406.11(1)(g)(1), 406.11(3), 406.16, 406.17, 406.18, 407.02(3m), 407.105, 407.107, 407.14 Note, 407.14(4)(c), 407.15(8)(a) and 410.03(1)(a)(6) and (7) as created and published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005. Sections NR 406.16(2)(d) and NR 406.17(3)(e) were repealed in 2015 and are removed without replacement; see paragraph (c)(137) of this section.

* * * * *

(137) On May 16, 2017, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting rules NR 400.02(136m), NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1). These revisions replace the existing definition of ''emergency electric generator'' with the Federal definition of ''restricted internal combustion engine'', amends procedures for revoking construction permits and include minor language changes and other administrative updates. Wisconsin has also requested to remove from the SIP NR 406.16(2)(d) and NR 406.17(3)(e), provisions affecting eligibility of coverage under general and registration construction permits, previously approved in paragraph (c)(113) of this section. This action ensures consistency with Wisconsin Environmental Protection Act (WEPA) laws.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02(136m) as published in the Wisconsin Administrative Register November 2015 No. 719, effective December 1, 2015.

(B) Wisconsin Administrative Code, NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1) as published in the Wisconsin Administrative Register November 2015 No. 719, effective December 1, 2015.

[FR Doc. 2018–19161 Filed 9–6–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0399; FRL–9983–33—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Commonwealth of Virginia's state implementation plan (SIP). The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0399. 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 (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 *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2018 (83 FR 14386), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of the SIP submitted in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Virginia is certifying that its existing NNSR program, covering the Washington, DC nonattainment area (which includes Alexandria City, Arlington County, Fairfax County, Fairfax City, Falls Church City, Loudoun County, Manassas City, Manassas Park City, and Prince William County in Virginia) (hereafter, Washington, DC Nonattainment Area) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule entitled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule),

for ozone and its precursors.[1] *See* 80 FR 12264 (March 6, 2015). The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth of Virginia on May 11, 2017.

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data available at the conclusion of the designation process. The Washington, DC Nonattainment Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. *See* 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data. The Washington, DC Nonattainment Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, this area did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. *See* 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Washington, DC Nonattainment Area 2008 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016.[2]

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Virginia was required to develop a SIP revision addressing certain CAA requirements for the Washington, DC Nonattainment Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015).[3] *See* 80 FR 12264 (March 6, 2015). EPA is proposing to approve Virginia's May 11, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Virginia's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.[4] The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. As set forth in the SIP Requirements Rule, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2008 8-hour ozone standard (*i.e.,* July 20, 2015).[5]

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for oxides of nitrogen (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Virginia's SIP-approved NNSR program is implemented through Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region, in the Virginia Administrative Code (VAC), 9VAC5–80—*Permits for Stationary Sources.* In its May 11, 2017 SIP revision, Virginia certifies that the version of 9VAC5–80

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements. On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion granting a number of challenges to the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). Specifically, as relevant here, the Court vacated the ''redesignation substitute'' provision in the implementation rule, which allowed states a way to satisfy anti-backsliding requirements for revoked standards. EPA and South Coast Air Quality Management District filed petitions for rehearing and those petitions are pending before the Court.

[2] EPA finalized approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Washington, DC Nonattainment Area on November 14, 2017. This final action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 82 FR 52651 (November 14, 2017). It should be noted that a DOA does not alleviate the need for Virginia to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment.

[3] Neither Virginia's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist.* v. *EPA.*

[4] *See* CAA sections 172(c)(5), 173 and 182.

[5] With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

in the SIP is at least as stringent as the federal NNSR requirements for the Washington, DC Nonattainment Area. EPA last approved revisions to Virginia's major NNSR SIP on August 28, 2017. In that action, EPA approved revisions to Virginia's SIP which made Virginia's NNSR program consistent with federal requirements. Additionally, those revisions corrected a deficiency which had been grounds for limited approval of Virginia's program. EPA found, therefore, that Virginia's program met all CAA requirements and was fully approvable. *See* 82 FR 40703.

EPA notes that neither 9VAC5–80 nor Virginia's approved SIP have the regulatory provision for any emissions change of VOC in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Virginia has never had an area designated extreme nonattainment for any of the ozone NAAQS. Nonetheless, the Virginia SIP is not required to have this requirement for VOC in extreme nonattainment areas until such time as Virginia has an extreme ozone nonattainment area. In Virginia's May 11, 2017 SIP revision, VADEQ asserted that anti-backsliding provisions do not apply to any area within Virginia, including the northern Virginia/Metropolitan Washington, DC area, because Virginia submitted to EPA a final ''redesignation substitute'' request for the 1997 ozone NAAQS for the Washington, DC area on April 29, 2016. As noted, in its February 16, 2018 decision, the *South Coast* Court vacated the provision in the implementation rule for the 2008 ozone NAAQS that created the ''redesignation substitute.'' The Court disagreed with EPA's interpretation of the Clean Air Act that once a standard is revoked, the Agency no longer has authority to change designations or classifications for that revoked standard. The Court ruled that in order for 1997 ozone nonattainment areas to be relieved from anti-backsliding requirements under the old revoked standard, those areas would need to seek, and EPA would need to approve, full statutory redesignations to attainment in compliance with CAA section 107(d)(3). The Court thus vacated the ''redesignation substitute,'' because it held that areas could not receive the benefits of a redesignation without meeting all of the elements in CAA section 107(d)(3)(E).

Given the D.C. Circuit's vacatur of the redesignation substitute mechanism in *South Coast,* EPA cannot approve Virginia's redesignation substitute request. Therefore, until the Washington, DC Nonattainment Area is redesignated under section 107(d)(3), the state remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12) and located in 9VAC5–80 of its SIP which applied to NSR requirements for the 1997 ozone NAAQS. EPA finds that the Virginia SIP presently includes all required major stationary source thresholds and emissions offset ratios for NSR purposes which were established for the SIP for Virginia's 1997 8-hour ozone NAAQS nonattainment designation. *See* 82 FR 40703 (finding Virginia's NNSR program consistent with all federal requirements in August 2017).

Thus, EPA finds that Virginia's SIP includes relevant and required anti-backsliding requirements. Virginia has not changed these major stationary source threshold and offset provisions in 9VAC5–80–2010 C, and furthermore, they remain in Virginia's federally-approved SIP unless and until EPA approves a full redesignation request in accordance with CAA section 107.[6] EPA expects that VADEQ will continue to implement its NNSR program consistently with its approved SIP for major stationary source thresholds and emission offset ratios.

EPA has not amended the SIP provisions related to 9VAC5–80 since the August 28, 2017 rulemaking where EPA last approved Virginia's NNSR provisions as meeting CAA requirements for a NNSR program. The SIP-approved version of 9VAC5–80 covers Virginia's portion of the Washington, DC Nonattainment Area and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS in 40 CFR 51.165, the Phase 2 Rule, and the SIP Requirements Rule.

III. Public Comments and EPA Response

EPA received a total of sixteen sets of comments on the April 4, 2018 NPR. Fifteen of those did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of VADEQ's submittal. Therefore, EPA is not responding to those comments. EPA did receive one set of relevant comments. Those comments and EPA's responses are discussed in this Section. All of the comments received are included in the docket for this rulemaking action.

Comment 1: The commenter asserts that EPA's proposed approval failed to adequately address whether Virginia's SIP ensures that the CAA's anti-backsliding requirements are met. In support of this claim, the commenter first points to Virginia's May 11, 2017 submittal in which VADEQ claims that anti-backsliding provisions don't apply because Virginia submitted a redesignation substitute request on April 26, 2016, and asserts that redesignation substitutes were ruled unlawful by the D.C. Circuit in the *South Coast* decision. Second, the commenter takes issue with EPA's assertion in the NPR that Virginia's NNSR SIP contains all of the requirements necessary to implement the 2008 8-hour ozone NAAQS, citing EPA's failure to address a February 18, 2018 approval action related to the implementation of the 2008 ozone NAAQS and the revocation of the 1997 ozone NAAQS.[7] The commenter asserts that until EPA addresses how ''the SIP as a whole,'' (including the revisions from EPA's February 18, 2018 approval) meets the anti-backsliding requirements, approval of Virginia's May 17, 2017 submittal would be arbitrary and unlawful.

EPA Response 1: The anti-backsliding requirements at both 40 CFR 51.165(a)(12) and 51.1105 provide that the minimum SIP elements for NNSR outlined at 40 CFR 51.165 continue to apply in areas designated as nonattainment for the 1997 ozone NAAQS that had not been redesignated to attainment by EPA prior to the April 6, 2015 revocation date of the 1997 NAAQS. EPA agrees with the commenter that VADEQ's assertion that the April 26, 2016 redesignation substitute request relieves Virginia of the CAA's anti-backsliding requirements is not correct, first because EPA never acted on that request and second because even if the Agency had approved such request, the *South Coast* Court held that redesignation substitutes cannot relieve nonattainment areas of anti-backsliding requirements. EPA clearly and unambiguously stated in the NPR (and restated in Section II of this document): ''Virginia remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12) and located in 9VAC5–80 of its SIP which applied to NSR requirements for the 1997 ozone NAAQS.'' [8] EPA further stated that Virginia is expected to implement its NNSR program consistent with its approved SIP (which does contain the CAA's anti-backsliding requirements) unless and until EPA promulgates a full redesignation of the DC Area for the

[6] Under the 1997 8-hour ozone NAAQS, the Washington, DC Area was classified as moderate nonattainment.

[7] *See* 83 FR 7610.

[8] *See* 83 FR 14388

2008 ozone NAAQS in accordance with CAA section 107(d)(3).

With respect to the commenter's assertion that EPA must evaluate the SIP as a whole and in light of the February 18, 2018 approval action, in order to grant approval to Virginia's May 17, 2017 submittal, EPA disagrees. EPA clearly stated in the NPR, and reiterates in this action, this action is specific to the NNSR program requirements of 40 CFR 51.165, which are codified by Virginia under Article 9 of 9VAC5–80. EPA's February 18, 2018 approval action did not revise or address any of the NNSR requirements in 9VAC5–80 and is therefore irrelevant to this action. EPA is not obligated, when reviewing each SIP submission, to re-review all prior SIP submissions already acted on. Such an interpretation of the CAA would subject the Agency to never-ending review of the state's implementation plan.

The February 18, 2018 action approved revisions to 9VAC5–20–204, 9VAC5–30–55, 9VAC5–151–20, and 9VAC5–160–30. The amendment to 9VAC5–30–55 added text stating that the primary and secondary ambient air quality standard of 0.08 ppm shall no longer apply after April 6, 2015, consistent with EPA's revocation of the 1997 standard. The revisions to 9VAC5–151–20 and 9VAC5–160–30 were related to transportation conformity and general conformity, neither of which are germane to this action. Subdivision (A)(2) of 9VAC5–20–204 defines and classifies the nonattainment area for the 1997 ozone standard. EPA's February 18, 2018 final rulemaking action approved a revision to 9VAC5–20–204 which provided that subdivision (A)(2) would no longer be effective after April 6, 2015. This is appropriate given the revocation of the 1997 standard. It is important to note that subdivision (A)(2) was not removed. Pursuant to 9VAC5–80–2000(B), the NNSR requirements of Article 9 apply to ''. . . nonattainment areas designated in 9VAC5–20–204 . . .'' This is the mechanism through which Virginia's NNSR requirements are applied to the various nonattainment areas in the Commonwealth. While the nonattainment area status for the 1997 ozone NAAQS is no longer active or ''effective'' due to the fact that that standard has been revoked, the only ''designation'' and ''classification'' that applies to the Washington DC Nonattainment Area for purposes of the revoked 1997 ozone NAAQS, and specifically for purposes of establishing the NNSR preconstruction permitting requirements of Article 9, remain on the books at 9VAC5–20–204. Therefore, even if the February 18, 2018 action might require amendment in light of *South Coast,* such a revision would not impact the effectiveness of EPA's final action approving Virginia's NNSR SIP.

Comment 2: The commenter asserts that EPA's proposed approval fails to ensure compliance with certain other NNSR requirements in 40 CFR 51.165(a)(1)(v)(E), specifically the requirement that any significant net emissions increase of nitrogen oxides (NO_X) be considered significant for ozone. The commenter points to part b. of the definition of ''Major modification'' in 9VAC5–80–2010 which states: ''[a]ny significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone,'' and claims that the lack of similar language pertaining to NO_X creates ambiguity as to whether the requirements of 40 CFR 51.165(a)(1)(v)(E) are met.

EPA Response 2: EPA disagrees that there is any ambiguity in Virginia's NNSR SIP with regard to the potential for a significant net increase of NO_X to be considered significant for ozone. The language identified by the commenter in part b. of the definition of ''Major modification'' in 9VAC5–80–2010 that is specific to volatile organic compounds is simply a recitation of nearly identical language in 40 CFR 51.165(a)(1)(v)(B) which is also specific to volatile organic compounds and has no implications with regard to NO_X. Virginia's May 17, 2017 submittal identified the provisions of the SIP which satisfy the requirement of 40 CFR 51.165(a)(1)(v)(E). First, under the definition of ''regulated NSR pollutant'' at 9VAC5–80–2010C, subdivisions a. and c.(1) include NO_X and make clear that NO_X is regulated as a precursor to ozone.[9] Additionally, subdivisions a. and c. of the definition of ''Significant'' contain the appropriate significance thresholds for NO_X (40 tons per year (tpy), or 25 tpy in areas designated as serious or severe nonattainment). Finally, part a. of the definition of ''Major modification'' in 9VAC5–80–2010 states that a major modification means ''any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a *regulated NSR pollutant;* and (ii) *a significant net emissions increase of that pollutant* from the source.'' (emphasis added) Because NO_X is clearly included in the definition of a ''Regulated NSR Pollutant,'' a significant emissions increase and a significant net emissions increase of NO_X would meet the definition of ''Major Modification,'' thus satisfying the requirement of 40 CFR 51.165(a)(1)(v)(E).

[9] 9VAC5–80–2010C in pertinent part reads as follows: '''Regulated NSR Pollutant' means any of the following: a. Nitrogen oxides or any volatile organic compound. . . . c. . . . . Precursors identified for purposes of this article shall be the following: (1) (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.''

IV. Final Action

EPA is approving Virginia's May 17, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Washington DC Nonattainment Area. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. *See* 82 FR 9158.

V. 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 certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its NSR program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 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 rule 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).

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 November 6, 2018. 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 Virginia's NNSR program and the 2008 ozone 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 27, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

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 VV—Virginia

■ 2. Amend § 52.2420, paragraph (e)(1) table by adding an entry entitled ''2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	* * *	*	*	*
2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS (*i.e.,* Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City) as well as the portions of Virginia included in the Ozone Transport Region (OTR) (*i.e.,* Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City).	5/17/17	9/7/17, [Insert **Federal Register** citation].	

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[FR Doc. 2018–19364 Filed 9–6–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0442; FRL–9982–99—Region 1]

Air Plan Approval; New Hampshire; Single Source Orders and Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. The revisions incorporate a single source order into the New Hampshire SIP, remove a previously-approved order from the SIP, and approve various definitions used within New Hampshire's air pollution control regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on October 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0442. 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, *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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On July 6, 2018 (83 FR 31513), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of revisions to New Hampshire's SIP consisting of an order establishing reasonably available control technology (RACT) requirements for the Diacom Corporation, removal from the SIP of a previously-approved RACT order for the Kalwall Corporation, and a request to revise a few definitions used within the State's air pollution control regulations. Other specific requirements of New Hampshire's RACT orders and revised definitions and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

We received a number of anonymous comments that address subjects outside the scope of our proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the substantive aspects of the proposed action. Consequently, these comments are not germane to this rulemaking and require no further response.

II. Final Action

EPA is approving an order establishing RACT for the Diacom Corporation, removal from the SIP of a previously-approved RACT order for the Kalwall Corporation, and a revision to eleven definitions used within the State's air pollution control regulations as revisions to the New Hampshire SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of revisions located within New Hampshire's Env-A, Rules Governing the Control of Air