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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0562; FRL- 11960-01-R3]

Air Plan Approval and Disapproval; Pennsylvania; Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) Under the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise its December 14, 2020 action that fully approved two state implementation plan (SIP) revisions, both submitted to EPA on August 13, 2018 by the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP). Those SIP revisions addressed reasonably available control technology (RACT) requirements for the 2008 ozone national ambient air quality standards (NAAQS), including those related to control technique guidelines (CTGs) for volatile organic compounds (VOC) and the addition of regulations controlling VOC emissions from industrial cleaning solvents. The SIP revisions also included certain clarifying amendments to Pennsylvania code related to major source RACT regulations. Upon reconsideration, EPA is proposing to revise its prior action to partially approve and partially disapprove the August 13, 2018 submittals. Specifically, EPA is proposing

approval of certain clarifying amendments as well as a negative declaration submitted by PADEP. EPA is proposing disapproval of the remainder of both SIP submittals related to CTGs and control of VOC emissions from industrial cleaning solvents. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0562 at *www.regulations.gov*, or via email to *goold.megan@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning &

Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 13, 2018, PADEP submitted to EPA two SIP revisions to satisfy certain RACT requirements for sources of VOC emissions required by sections 182(b)(2) and 184(b)(1)(B) of the CAA and the implementing regulations for the 2008 8-hour ozone NAAQS (80 FR 12264, March 6, 2015; 40 CFR part 51, subpart AA). Additionally, these two submittals are related to another PADEP SIP submission addressing RACT for major stationary sources of VOC and oxides of nitrogen (NO_x) that was conditionally approved by EPA on May 9, 2019. See section II.B.2 of this proposed rulemaking.

I. Background

A. Ozone NAAQS and RACT Requirements

On July 18, 1997 (62 FR 38856), EPA promulgated a revised standard for ground level ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period adopted in 1979, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. On March 27, 2008 (73 FR 16436), EPA further strengthened the 8-hour ozone standards from 0.08 ppm to 0.075 ppm (2008 8-hour ozone NAAQS). On October 26, 2015, (80 FR 65292) EPA adopted another revision to the ozone standard (2015 ozone NAAQS), but the 2008 ozone standard remains in place. This action concerns RACT requirements under the 2008 8-

hour NAAQS.

The CAA regulates emissions of NO_x and VOC to prevent photochemical reactions that result in ozone formation. Section 182(b)(2) of the CAA requires states with ozone nonattainment areas classified as moderate or higher to submit a SIP revision requiring implementation of RACT. EPA has consistently defined “RACT” as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.

The CAA requires RACT revisions for three specific categories of sources for the ozone NAAQS. First, section 182(b)(2)(A) requires RACT for each category of VOC sources in the nonattainment area covered by a CTG document issued by EPA between November 15, 1990 and the date of attainment.¹ Second, section 182(b)(2)(B) requires RACT for all VOC sources in the area covered by any CTG issued before November 15, 1990. Third, section 182(b)(2)(C) requires RACT for all other major stationary sources of VOC located in the nonattainment area. In addition, section 182(f) subjects major stationary sources of NO_x to the same RACT requirements applicable to major stationary sources of VOC.² EPA has not issued any CTGs for categories of NO_x sources, so the effect of section 182(f) is to require that SIPs also require RACT for major stationary sources of NO_x in accordance with section 182(b)(2)(C). The ozone RACT requirements under section 182(b)(2) are usually referred to as VOC CTG RACT, non-CTG VOC

¹ EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of CTG and alternative control technique (ACT) documents.

² A “major source” is defined based on the source’s potential to emit NO_x or VOC, and the applicable ton per year emission thresholds defining a “major” source differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

RACT, and major NOx RACT. In addition, section 184(a) of the CAA established an Ozone Transport Region (OTR) comprised of 12 eastern states, including all of Pennsylvania. Pursuant to section 184(b), the RACT requirements of section 182(b)(2) which would be applicable if an area were classified as a moderate nonattainment area apply to all areas within the OTR. This requirement is referred to as OTR RACT. OTR RACT applies throughout the Commonwealth of Pennsylvania.

On March 6, 2015 (80 FR 12264), EPA published a final rule that outlined the obligations related to required SIP requirements for the 2008 8-hour ozone NAAQS. This rule, herein referred to as the “2008 ozone implementation rule,” contained, among other things, a description of EPA’s expectations for states with RACT obligations. The 2008 ozone implementation rule indicated that states could meet RACT (1) through the establishment of new or more stringent requirements that meet RACT control levels, (2) a certification that previously adopted RACT controls in their SIP, under a prior ozone NAAQS, represent adequate RACT control levels for the 2008 8-hour ozone NAAQS, or (3) with a combination of these two approaches. In addition, a state could submit a negative declaration in instances where, for a particular CTG, there are no sources within the state covered by that CTG.

In EPA’s 2008 ozone implementation rule, the Agency states that “states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs.” See 80 FR at 12279, March 6, 2015.

B. Challenge to Approval, Court Proceedings, Voluntary Remand, and Reconsideration

On December 14, 2020 (85 FR 80616), EPA published a full approval of PADEP's two August 13, 2018 SIP submittals. The approval was challenged in the U.S. Court of Appeals for the Third Circuit, and on September 3, 2021, that court granted EPA's request for remand without vacatur of the Agency's final full approval.³

A petitioner filed litigation in the Eastern District of Pennsylvania on May 16, 2023, arguing EPA had unreasonably delayed in its reconsideration of the final approval of the August 13, 2018 SIP submittals. On December 15, 2023, the court filed a consent decree requiring that EPA complete its reconsideration of the December 14, 2020 final rule by November 15, 2024.⁴

EPA has reconsidered that final full approval and EPA is proposing that it was incorrect to fully approve the August 13, 2018 submittals. Now, EPA is proposing to revise its action to a partial approval and partial disapproval that will disapprove parts of the August 13, 2018 submittals, while leaving intact our prior approval of other sections. The particulars are explained in sections II.A and II.B of this document. See, CAA section 110(k)(6). Specifically, EPA is proposing to approve certain clarifying amendments to major source RACT regulations contained in the submittals, as well as a negative declaration for CTG RACT purposes. EPA is proposing to disapprove the remainder of both August 13, 2018 SIP submittals, including those related to CTGs and control of VOC emissions from industrial cleaning solvents.⁵

³ A copy of the court order is located in the docket for this action. Docket Id. EPA-R03-OAR-2019-0562 in *regulations.gov*.

⁴ A copy of the court order is located in the docket for this action. Docket Id. EPA-R03-OAR-2019-0562 in *regulations.gov*.

⁵ Including: a certification by PADEP that its existing state regulations for sources covered by certain CTGs is RACT for the 2008 8-hour ozone NAAQS; a request that Pennsylvania's incorporation by reference of all Federal NSPS at 25 Pa. Code Chapter 122 be approved into the SIP; and requested the approval into the SIP of source-specific permit conditions for sources subject to the "CTG for Shipbuilding

If EPA finalizes the disapproval proposed here, that action would commence a sanctions clock under CAA section 179, providing for emission offset sanctions for new or modified sources within the Commonwealth if EPA has not fully approved a revised plan within 18 months after final disapproval, and providing for highway funding sanctions in affected nonattainment areas⁶ if EPA has not fully approved a revised plan within six months after the imposition of offset sanctions. The sanctions clock can be stopped only if the conditions of EPA's regulations at 40 CFR 52.31 are met. Pursuant to CAA section 110(c)(1)(B), a final disapproval would also initiate an obligation for EPA to promulgate a Federal implementation plan (FIP) within 24 months unless PADEP has submitted, and EPA has approved, a plan addressing the applicable RACT requirements.

II. Summary of SIP Revision and EPA Analysis

A. Pennsylvania's RACT Certification of CTGs Under the 2008 8-Hour Ozone NAAQS and Request to Incorporate Standards of Performance for New Stationary Sources into the SIP

The first August 13, 2018 SIP submittal is entitled "Certification of Reasonably Available Control Technology for Control Techniques Guidelines Under the 2008 Ozone National Ambient Air Quality Standards and Incorporation of 25 Pa Code Chapter 122 (Relating to National Standards of Performance for New Stationary Sources) into the Commonwealth's State Implementation Plan." PADEP submitted this SIP revision for the purposes of meeting the RACT requirements under CAA sections 182(b)(2) and

and Ship Repair Operations Surface Coating" (61 FR 44050, August 27, 1996) and "Control of Volatile Organic Compounds Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry," EPA-450/3-84-015, December 1984.

⁶ For the OTR states, such highway sanctions would only apply in nonattainment areas. If the OTR state does not contain any nonattainment areas, then the highway sanctions would not apply in that state.

184(b)(1)(B) and implementing the regulations for the 2008 8-hour ozone NAAQS. Specifically, this submittal: (1) certifies that PADEP's adoption and implementation of regulations to control VOC emissions is consistent with EPA's CTGs and represents RACT for these covered CTG sources for the 2008 ozone standard; (2) incorporates 25 Pa. Code Chapter 122 (relating to national standards of performance for new stationary sources) into the Pennsylvania SIP and certifies that those provisions continue to represent RACT for facilities subject to such standards of performance; and (3) incorporates specific permit conditions from certain facilities for the purpose of establishing source-specific RACT-level controls for those facilities.

1. CTG Certifications

As noted in section I.A. of this preamble, if an area had been designated as a nonattainment area for the 1979 and 1997 ozone standards, and adopted RACT level controls, the state could review those controls to determine if they still represent RACT for the 2008 8-hour ozone NAAQS. PADEP determined that various regulations consistent with each CTG continues to represent RACT for the 2008 8-hour ozone NAAQS. PADEP based this certification on the following: (1) certification that Pennsylvania's regulations meet the CAA RACT requirements, are based on the most currently available technically and economically feasible controls, and represent RACT for implementation purposes pertaining to the 2008 8-hour ozone NAAQS; (2) certification that PADEP has adopted and implemented SIP-approved provisions or regulations addressing applicable EPA CTG source categories and that these provisions or regulations represent RACT control levels or control levels more stringent than RACT under the 2008 8-hour ozone NAAQS; (3) certification that PADEP has implemented all

CTG RACT controls indicated in this SIP revision, based on the EPA's guidance and standards, and that they represent current RACT control levels under the 2008 8-hour ozone NAAQS; and (4) certification that PADEP has determined that there is one CTG source category for which it has made a negative declaration because there are no existing sources in Pennsylvania in this source category subject to CTG RACT.

As noted previously, EPA finalized approval of PADEP's two August 13, 2018 SIP submittals on December 14, 2020 and this final approval was voluntarily remanded to EPA for reconsideration on September 3, 2021. The final action was remanded without vacatur so that the Agency could reconsider its approval of PADEP's August 13, 2018 SIP revisions to ensure that Pennsylvania's RACT requirements for sources covered by CTGs satisfy the requirements associated with the 2008 8-hour ozone NAAQS.

Upon reconsideration, and as described more fully in this proposed rulemaking, EPA is proposing to determine that we erred in previously approving the CTG portion of PADEP's RACT certification SIP, as PADEP's certification failed to show sufficient support in the record that the provisions identified as RACT in PADEP's certification fulfills the RACT requirements of the 2008 8-hour ozone NAAQS for CTG sources. As clarified in the 2008 implementation rules, RACT analysis should consider any technical advances since previous approvals of the RACT rules and provide evidence that other relevant information, including recent technical information and information available at the time of adoption, were considered to determine the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. PADEP did not provide this analysis. EPA therefore concludes that the PADEP's SIP submittals did not

fully evaluate VOC RACT CTG requirements, and the Agency is proposing disapproval of the certification portion of the first August 13, 2018 SIP submittal, with the exception of PADEP's negative declaration for one CTG source category. PADEP determined that there are no sources in Pennsylvania (excluding Philadelphia County and Allegheny County) covered by EPA's CTG "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners," (EPA-450/3-82-009; September 1982). The record in our original action in support of this negative declaration, as discussed in that action (85 FR at 80617, December 14, 2020, and the associated technical support document (TSD)), was sufficiently robust and well-developed. EPA is proposing to approve PADEP's submitted negative declaration for this CTG source type.

2. Incorporation by Reference of New Source Performance Standards (NSPS)

Pennsylvania has incorporated by reference all of the NSPS promulgated by EPA under section 111 of the CAA and found at 40 CFR part 60. See 25 Pa. Code 122. PADEP determined that for certain source categories, the Federal requirements of 40 CFR part 60—Standards of Performance for New Stationary Sources, provide RACT level control.

Upon reconsideration, EPA is proposing that PADEP's determination that NSPS requirements equal RACT was not supported by a sufficiently robust and well-developed record indicating that, in addition to considering the NSPS themselves, that non-NSPS requirements, including recent technical information and the RACT requirements of other states, had also been reviewed and considered as potential RACT. As stated previously in this preamble, EPA's 2008 ozone implementation rule clarifies that a more demonstrative and robust comparison is needed. EPA is proposing that we erred in our

previous approval that certain NSPS provisions meet CTG requirements and therefore are sufficient to implement RACT for those sources for the 2008 8-hour ozone NAAQS. The Agency now proposes disapproval of the portions of PADEP's SIP submittals focused on NSPS providing RACT level control.

3. Incorporation of Source Specific Permit Limits

PADEP found only two sources covered by the "Shipbuilding/Repair ACT (EPA 453/R-94-032, April 1994) and EPA's CTG for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR 44050, August 27, 1996)" and one source subject to "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry, EPA-450/3-84-015, December 1984." Rather than promulgate a rule to address the RACT requirements of those two CTGs for only three affected sources, PADEP incorporated the requirements of the CTGs into Federally enforceable permits and submitted the applicable permit limits for incorporation into the SIP.

Redacted versions of Permit Nos. 25-00930 (Donjon Shipbuilding) and 26-00545 (Heartland Fabrication) were submitted for incorporation into the Commonwealth's SIP. Generally, the control strategy is to limit the VOC content of the coatings and materials used. In its first August 13, 2018 SIP submittal, PADEP stated that the relevant portions of the permits are consistent with the Shipbuilding and Ship Repair Operations (Surface coating) CTG and therefore satisfy the RACT requirements for these sources. A redacted version of Permit No. 39-00024 (Geo. Specialty Chem. Trimet Div.) was also submitted for incorporation into the Pennsylvania SIP. PADEP certified that this is the only source

to which the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Process CTG applies. Pursuant to the CTG, “It is recommended that air oxidation facilities for which an existing combustion device is employed to control process VOC emissions should not be required to meet the 98 percent emissions limit until the combustion device is replaced for other reasons. In other words, no facility would be required to upgrade or replace an existing control device.”⁷ PADEP determined that the facility’s formaldehyde process and catalytic incinerator were installed in 1980, before the December 1984 applicability date of the CTG. PADEP further determined that neither the process nor the control device have been modified since the 1980 installation date. PADEP therefore certified that the existing control strategy and emission limitations in the permit constitute RACT for this particular source.

Similar to EPA’s justification for disapproving the previous submittal elements, upon reconsideration, EPA is proposing that PADEP did not support its conclusion by providing a sufficiently robust and well-developed record. Although here PADEP has adopted CTG requirements into specific permits versus relying on a regulation which incorporates the CTGs, the Commonwealth still relies on the CTGs equaling RACT, without a robust comparison with additional relevant information. Additionally, PADEP does not provide any documentation of an analysis to determine that RACT is fulfilled by existing source specific rules and the proposed concurrent revisions.

Therefore, EPA is proposing that it erred in its previous final action by approving PADEP’s determination that particular emission limitations in the noted permits

⁷ See “Control of Volatile Organic Compound Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry, EPA, 450/3-84-015, December 1984,” Page 4-1, available at: www3.epa.gov/airquality/ctgact/198412vocepa4503-84-015airoxidationprocesses.pdf.

constitute RACT and we now propose disapproval of these components which we had approved in our December 14, 2020 final action.

B. Regulatory Revisions Related to VOC and NOx RACT

The SIP revisions submitted by PADEP in the second August 13, 2018 SIP submittal, entitled “Control of Volatile Organic Compound Emissions from Industrial Cleaning Solvents; General Provisions; Aerospace Manufacturing and Rework; Additional RACT Requirements for Major Sources of NOx and VOCs,” include: (1) the addition of 25 Pa. Code 129.63a (relating to the control of VOC from industrial cleaning solvents (ICS)); (2) amendments to 25 Pa. Code sections 121.1 and 129.51 (definitions and “general” provisions, respectively) in order to support the addition and implementation of 25 Pa. Code section 129.63a; (3) a correction to the VOC emission limit table in 25 Pa. Code section 129.73 (relating to aerospace manufacturing and rework); and (4) amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100 to clarify certain requirements and to update the list of exemptions.

1. Addition of 25 Pa. Code section 129.63a and amendments to sections 121.1 and 129.51.

PADEP determined that the recommendations in EPA’s 2006 ICS CTG are technically and economically feasible for sources in this source category and developed 25 Pa. Code section 129.63a for the purpose of implementing VOC RACT for affected industrial cleaning solvent sources in Pennsylvania. In EPA’s December 14, 2020 final action, EPA approved this portion of the second August 13, 2018 SIP submittal based on the PADEP’s determination that the 2006 ICS CTG is equal to RACT for the 2008 8-hour ozone NAAQs. Having reconsidered our prior approval, EPA is proposing that it

erred in our prior full approval, and therefore we propose to revise the prior action to disapprove this portion of the submittal, as PADEP's analysis did not look beyond the CTG requirements.

Since the amendments to 25 Pa. Code sections 121.1 and 129.51 support the addition and implementation of section 129.63a, which EPA is now proposing to disapprove, the Agency is also proposing to disapprove the revisions made to 25 Pa. Code sections 121.1 and 129.51 we had previously approved into the SIP.

2. Amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100.

The second PADEP August 13, 2018 SIP submittal included amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100, to satisfy certain RACT requirements under both the 1997 and 2008 8-hour ozone NAAQS for specific source categories (also known as "RACT II").⁸ These amendments update 25 Pa. Code sections 129.96(a) and (b) (relating to applicability) to revise the list of sources exempt from RACT II, because these source are already subject to a RACT requirement or RACT emission limitation, or both, that has been established elsewhere.⁹ The applicability criteria in section 129.96(a) and (b) are revised in order to add reference to sections 129.52d, 129.52e and 129.74 (relating to control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings; control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations;

⁸ Pennsylvania's RACT II Rule applies statewide to existing major NOx and/or VOC sources within the Commonwealth, except those subject to other Pennsylvania regulations, as specified in 25 Pa. Code 129.96(a) and (b).

⁹ Other specific requirements of PADEP's two August 13, 2018 submittals and the rationale for EPA's proposed action are explained in EPA's previous notice of proposed rulemaking (NPRM) and will not be restated here. See 85 FR 12877, March 5, 2020.

and control of VOC emissions from fiberglass boat manufacturing materials). Additionally, 25 Pa. Code sections 129.97(k)(1)(ii) and 129.99(i)(1)(ii) (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule; and alternative RACT proposal and petition for alternative compliance schedule) were amended by adding the text “or major VOC emitting facility” for clarity. Section 129.100(a) (relating to compliance demonstration and recordkeeping requirements) was amended to add “RACT” in two places for clarity. The emission limits and substantive requirements of 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100 were not amended.

EPA has evaluated PADEP’s amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100 and the Agency has made the preliminary determination that these clarifying amendments were appropriately approved in the prior action. The amendments made in this portion of the second SIP revision do not impact how PADEP determined that RACT was met by certain sources. Therefore, on reconsideration, EPA is not proposing to change our approval of PADEP’s amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100 to disapproval.

III. Proposed Action

EPA is proposing to amend its prior full approval of PADEP’s August 13, 2018 SIP submittals to a partial approval and partial disapproval. Specifically, EPA is proposing to retain approval of clarifying amendments to major source RACT regulations as well as a negative declaration for CTG RACT purposes. EPA is proposing disapproval of the remainder of both SIP submittals, including those related to CTGs and control of VOC emissions from industrial cleaning solvents. EPA is soliciting public

comments on all of the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5 and as discussed in section II.B.2 of this preamble, EPA is proposing to incorporate by reference 25 Pa. Code sections 129.73, 129.96, 129.99, and 129.100. These measures were already incorporated by reference into the SIP under a previous approval (85 FR 80625, December 14, 2020). If this proposed disapproval is finalized, EPA does not intend to remove these amendments, but to retain them. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has

jurisdiction. In those areas of Indian country, the rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rulemaking also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

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

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” this action is also not subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” PADEP did not evaluate EJ considerations as part of its SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,

Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator,

Region III.

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