



40 CFR Part 62

[EPA-R03-OAR-2025-1746; FRL-13006-02-R3]

Approval and Promulgation of State Air Quality Plans (Negative Declarations) for Designated Facilities and Pollutants; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of and is codifying approval of negative declarations submitted by the District of Columbia Department of Energy and Environment (DCDOEE) on July 19, 2024 and August 28, 2024. The negative declarations submitted by the DCDOEE certify that there are no existing large municipal waste combustors (LMWC), crude oil and natural gas facilities (ONG), or electric utility generating units (EGU) subject to sections 111(d) and 129 of the Clean Air Act (CAA) within the jurisdiction of the District of Columbia.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2025-1746. All documents in the docket are listed on the *Regulations.gov* website. 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 *Regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additionally available information.

FOR FURTHER INFORMATION CONTACT: Krystal Stankunas, Permits Branch (3AP10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F

Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5271. Ms. Stankunas can also be reached via electronic mail at *Stankunas.krystal@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 2025, 90 FR 52313, the EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of the negative declarations submitted by District of Columbia Department of Energy and Environment (DCDOEE). The negative declarations certify that there are no existing large municipal waste combustors (LMWC), crude oil and natural gas facilities (ONG), or electric utility generating units (EGU) subject to sections 111(d) and 129 of the CAA within the jurisdiction of the District of Columbia.

The CAA requires State regulatory agencies to implement emission guidelines and associated compliance times using a State plan developed under sections 111(d) and 129 of the CAA. Section 111(d) of the CAA establishes standards of performance for certain existing sources. Air pollutants included under this section are those which have not already been established as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d)(1) of the CAA requires States to submit to the EPA for approval a plan that establishes standards of performance. The plan must provide that the State will implement and enforce the standards of performance.

Section 129 of the CAA requires emission guidelines to be promulgated for solid waste incineration units, including LMWCs. Section 129 of the CAA mandates that all plan requirements be at least as protective as the promulgated emission guidelines, including fixed final compliance dates, fixed compliance schedules, and title V permitting requirements for all affected sources. Section 129 of the CAA also requires the States to submit plans to the EPA within one year after promulgation of the emission guidelines and compliance times.

The EPA prescribes a Federal plan if a State does not submit a State-specific plan or the submitted plan is disapproved. If a State has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a State plan for that source category in accordance with 40 Code of Federal Regulations (CFR) 60.23(b), 60.23a(b) and 62.06.

II. Summary of Action and the EPA Analysis

The DCDOEE submitted negative declarations to the EPA on July 19, 2024, and August 28, 2024, certifying that there are no existing large municipal waste combustors, crude oil and natural gas facilities, or electric utility generating units in its jurisdiction that are subject to the requirements of 40 CFR part 60 subpart Cb, subpart OOOOc, and subpart UUUUb, respectively. For additional background information on DCDOEE's negative declaration, see the documents that are available at *Regulations.gov*, Docket ID No. EPA-R03-OAR-2025-1746.

III. EPA's Response to Comments Received

The EPA received one set of comments on the November 20, 2025, NPRM. *See* 90 FR 52312. A summary of the comments and the EPA's responses are included in this section. A copy of the set of comments can be found in the docket for the rulemaking action.

Comment 1: The comment suggested that the EPA invoked the "good cause" exception under 5 U.S.C. 553(b)(B) to forgo notice and comment and publish this action as a direct final rule. The comment urged EPA to withdraw its action, republish the action as a proposal, and provide "the APA's ordinary process."

Response 1: The EPA disagrees with this comment. This action was published as a notice of proposed rulemaking, 90 FR 52312, November 20, 2025, and did not include or otherwise mention the "good cause" exception under 5 U.S.C. 553(b)(B). The comment period for this NPRM was open from November 20, 2025 to December 22, 2025, as stated in the "DATES" section of the NPRM. The EPA is now finalizing that proposed rulemaking.

Comment 2: The comment stated that the record for this action is incomplete and that

EPA did not “provide a reasoned basis for approving each negative declaration.” The comment further asserted that the docket for this action should include: DCDOEE’s signed negative declaration letters, with dates and specific identification of the relevant emission guidelines; the inventory or survey EPA used to conclude that no designated facilities exist within DCDOEE’s jurisdiction; a clarification of applicability determinations; and any “data checks against national datasets.” The comment requests that EPA supplement the docket with the complete State submissions and corroborating review materials.

Response 2: The EPA disagrees that the record for this action is incomplete. The EPA included DCDOEE’s dated negative declaration letters in the docket for this action, EPA-R03-OAR-2025-1746. The NPRM for this action detailed the relevant emissions guidelines corresponding to each negative declaration submitted by DCDOEE: 1) 40 CFR part 60, subpart OOOOc for Existing Crude Oil and Natural Gas Facilities; 2) 40 CFR part 60, subpart UUUUuB for Electric Utility Generating Units; and 3) 40 CFR part 60, subpart Cb for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994. There were no applicability determinations submitted by DCDOEE in its negative declaration letters, nor did the EPA receive any other requests for an applicability determination related to this matter.¹ The regulations at 40 CFR part 60, subpart B (Subpart B), contain general provisions applicable to the adoption and submittal of State plans for controlling designated pollutants. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a State. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the State may submit a letter of certification to that effect (i.e., a negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan. Accordingly, the EPA did not utilize any additional surveys,

¹ The EPA’s applicability determinations are publicly available. Determinations submitted prior to May 2019 may be found at <https://cfpub.epa.gov/adi/>, and those submitted after May 2019 may be found at <https://www.epa.gov/complying-air-emissions-standards-stationary-sources/epa-determinations-compliance-and>.

inventories, or national dataset checks to verify DCDOEE's assertion that there are no affected or designated facilities in its jurisdiction.

Comment 3: The comment stated that EPA must either prepare an Initial Regulatory Flexibility Analysis (RFA) or certify that the rule will have no significant economic impact on a substantial number of small entities and provide a "statement providing the factual basis for such certification." The comment also stated that EPA should explain which categories of small entities it considered in its determination, and why "codifying negative declarations has no foreseeable economic impacts."

Response 3: The EPA is certifying that this action will not have a significant economic impact on a substantial number of small entities. *See* 90 FR 52312, November 20, 2025. Because the EPA has certified that this action will not have a significant economic impact, Sections 603 and 604 of the RFA do not apply. 5 U.S.C. 605(b). The EPA provided DCDOEE's negative declaration letters in the docket for this action, EPA-R03-OAE-2025-1746. These letters certify that no affected facilities are located within DCDOEE's jurisdiction. If such facilities were found to be within DCDOEE's jurisdiction, they would be subject to the applicable rules and requirements. Codifying a negative declaration merely memorializes the EPA's receipt of a negative declaration letter.

Comment 4: The comment requested that EPA clarify the applicability of the Paperwork Reduction Act, UMRA, and Executive Order 12866. The comment requests that EPA also clarify whether any ongoing inventory or verification activities are assumed at the State or local level as a condition of maintaining an accurate negative declaration and confirm that no reporting or recordkeeping is required by this approval. The comment also states, "If EPA concluded UMRA does not apply because the action does not impose enforceable duties or costs of \$100 million or more, it should expressly state that determination and its rationale under 2 U.S.C. 1532." The comment also requests, in relation to Executive Order 12866, that "EPA should, at minimum, identify whether OIRA was consulted and confirm that no significance criterion is

triggered.”

Response 4: Section 129 of the CAA requires the EPA to promulgate performance standards and emission guidelines pursuant to CAA section 111(d) for all categories of existing solid waste incineration units to control certain pollutants. State regulatory agencies implement the emission guidelines and compliance times using a State plan developed under sections 111(d) and 129 of the CAA. Section 111(d) of the CAA establishes general requirements and procedures on State plan submittals for the control of designated pollutants. 40 CFR part 60, subparts B and Ba set forth the procedures for adoption and submittal of the State plan. Section 129(b)(2) of the CAA mandates that all State plan requirements be at least as protective as the promulgated emission guidelines. Section 129(b)(2) of the CAA also requires that state plans be submitted to the EPA within one year after the EPA's promulgation of the emission guidelines and compliance times. Under CAA section 129(b)(3), if a State does not submit an approvable State plan within two years after the promulgation of the emission guidelines, the Federal plan applies in that State until the State has an approved State plan. A State may submit a negative declaration in lieu of a State plan if there are no sources in the State subject to the promulgated rule. Because emissions guidelines set the standards for existing sources, once a State has determined that there are no existing sources, the only way for there to be existing sources is if they are unknown to the State. In such cases, these discovered sources will be subject to the Federal plan until the State submits an approvable State plan.

While DCDOEE may maintain inventories for emission sources subject to these rules, the approval of this negative declaration does not impose any additional reporting or recordkeeping requirements. The Paperwork Reduction Act (PRA) does not apply because this action does not involve an information collection burden as defined by the PRA.

With regard to UMRA, UMRA does not apply because this action does not impose any enforceable duties or costs greater than \$100 million.

With regard to Executive Order 12866, the EPA has determined that this rule is not a

significant regulatory action as defined in Executive Order 12866. It was therefore not submitted to the Office of Management and Budget (OMB) for review.

IV. Final Action

In this action, the EPA is approving the negative declarations submitted by DCDOEE in lieu of its CAA (129)/111(d) State plans for the LMWC, ONG, and EGU Emission Guidelines to satisfy the requirements of 40 CFR 60.23(b), 60.23a(b), and 62.06. The Code of Federal Regulations is being amended at 40 CFR part 62 subpart J to reflect this approval.

V. Statutory and Executive Order Reviews

1. General Requirements

Under the CAA, the EPA has the authority to approve a 129/111(d) negative declaration in lieu of a State plan that complies with the provisions of the CAA and applicable Federal regulations. *See* 40 CFR 62.06. In reviewing CAA section 129/111(d) negative declaration letters, EPA's role is to approve State choices, provided that they meet the criteria of the CAA and of EPA's implementing regulations. Accordingly, this action merely notifies the public of the EPA's receipt of DCDOEE's negative declarations for large municipal waste combustors, crude oil and natural gas facilities, and electric utility generating units and does not impose additional requirements. For that reason, this action:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not expected to be an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C.

3501 *et seq.*) because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

This action 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.*).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because 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.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations 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 (NTTAA)

This action does not involve technical standards. This action is not subject to the 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 Clean Air Act.

J. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

2. 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. 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).

3. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Amy Van Blarcom-Lackey,
Regional Administrator,
Region III.

For the reasons set forth in the preamble, [EPA](#) amends 40 CFR part 62 as follows:

PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

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

Subpart J - District of Columbia

2. Revise § 62.2130 to read as follows:

§ 62.2130 Identification of plan—negative declaration.

(a) Letter from the Department of Consumer and Regulatory Affairs submitted July 6, 1992 certifying that there are no existing municipal waste combustor units in the District of Columbia that are subject to part 60, subpart Cb, of this chapter.

(b) Letter from the District of Columbia, Department of Energy and Environment, submitted July 19, 2024 certifying that there are no existing large municipal waste combustors in the District of Columbia that are subject to part 60, subpart Cb of this chapter.

3. Add an undesignated center heading and § 62.2165 immediately after § 62.2160 to read as follows:

EMISSIONS FROM EXISTING CRUDE OIL AND NATURAL GAS FACILITIES

§ 62.2165 Identification of plan—negative declaration.

Letter from the District of Columbia, Department of Energy and Environment, submitted August 28, 2024 certifying that there are no existing crude oil and natural gas facilities in the District of Columbia that are subject to part 60, subpart OOOOc of this chapter.

4. Add an undesignated center heading and § 62.2170 immediately after the newly added § 62.2165 to read as follows:

EMISSIONS FROM EXISTING ELECTRIC UTILITY GENERATING UNITS

§ 62.2170 Identification of plan—negative declaration.

Letter from the District of Columbia, Department of Energy and Environment, submitted August 28, 2024 certifying that there are no existing electric utility generating units in the District of Columbia that are subject to part 60, subpart UUUUb of this chapter.

[FR Doc. 2026-10739 Filed: 5/28/2026 8:45 am; Publication Date: 5/29/2026]