ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; New York; Interstate Transport Infrastructure SIP Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of a New York State Implementation Plan (SIP) submittal pertaining to the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

DATES: This rule is effective on September 26, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0320. All documents in the docket are listed on the http://www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through http://www.regulations.gov or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, 212–637–3702, fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we”, “us”, and “our” means EPA.

I. Background

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in New York’s infrastructure SIP submitted on April 4, 2013 to address applicable infrastructure requirements with respect to the 2008 ozone NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years [or such shorter period as the Administrator may prescribe] after the promulgation of a national primary ambient air quality standard [or any revision thereof],” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address. EPA commonly refers to such state plans as “infrastructure SIPs.” In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any other state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state. This rulemaking addresses prongs 1, 2, and 4 of CAA section 110(a)(2)(D)(i). EPA will address the other portions of the April 4, 2013 infrastructure SIP submittal, including prong 3 pertaining to CAA section 110(a)(2)(D)(i)(III), in another action.

II. What action did EPA propose on the SIP submission?

The proposed rulemaking associated with this final action was published on June 21, 2016 (81 FR 40429). In that action, EPA proposed to disapprove the portions of New York’s April 4, 2013
SIP submission addressing prongs 1 and 2, and proposed to approve prong 4 regarding CAA section 110(a)(2)(D)(i) requirements.

In proposing to disapprove the SIP submission as to prongs 1 and 2, EPA noted several deficiencies in New York’s submission: (1) New York’s own modeling showed “predicted” nonattainment in the bordering states of Connecticut, New Jersey, and Pennsylvania, but did not adequately explain its conclusion that New York emissions will not significantly contribute to these predicted exceedances; (2) the emissions reductions cited in New York’s submission were based on preliminary emissions estimates, and were below the assumed emissions reductions that were used in New York’s cited preliminary screening modeling performed for the Ozone Transport Commission; (3) the submission used a projection year (2020) to model downwind air quality that is two years beyond the July 11, 2018 moderate area attainment date for the 2008 ozone NAAQS; (4) the submission failed to address prong 2, the State’s potential interference with maintenance of the 2008 ozone NAAQS in other states; (5) the submission did not demonstrate that the emission rates at which Electric Generating Units (EGUs) in the state operated were the same or greater than EGUs at a $1,300 per ton control cost threshold, and replace its program with a program that covers only EGUs at a $1,300 per ton control cost threshold. NYSDEC also states that EPA should explain how its proposed transport rule addresses transport more effectively than New York’s plan.

Response 1: As noted above, we identified a number of deficiencies with New York’s SIP submission to support the proposed disapproval of the plan as to prongs 1 and 2 with respect to the 2008 ozone NAAQS. While EPA cited the modeling conducted for EPA’s proposed Cross State Air Pollution Rule Update for the 2008 ozone standard (CSAPR Update), 80 FR 75706 (December 3, 2015), as additional evidence that emissions from New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states, this action did not propose and does not finalize any remedy to address the deficiency identified in New York’s SIP submission. This action does not itself replace New York’s plan with the proposed remedy that was included in the CSAPR Update proposal or any other remedy. Rather, with respect to prongs 1 and 2, this action disapproves New York’s submission for its failure to provide sufficient analysis to support its conclusion that the state’s SIP contains adequate provisions prohibiting emissions which interfere with air quality in other states.

NYSDEC notes the burden imposed upon the EPA in reviewing this action. In submitting an infrastructure SIP, the state’s burden is to demonstrate to EPA’s satisfaction that it has complied with the statutory requirements of CAA section 110(a)(2). EPA’s role in reviewing infrastructure SIP submissions is to ensure that the state’s plan complies with the statute. With respect to prongs 1 and 2, the EPA has reviewed New York’s demonstration and determined, for the reasons summarized above, that it does not adequately demonstrate that the state’s plan is sufficient to ensure that emissions from the state will not significantly contribute to nonattainment or interfere with maintenance. As noted below, this disapproval will trigger a federal implementation plan (FIP) clock which will require the EPA to promulgate a plan to prohibit those levels of emissions that impact downwind air quality in violation of the statute. However, the EPA is not required to provide that metric at the time it reviews the state’s demonstration.

Moreover, EPA’s 2011 modeling baseline used for evaluating interstate transport with respect to the 2008 ozone NAAQS accounted for the emission reductions from controls listed in the SIP—including New York’s Reasonably Available Control Technology (RACT) rules—and nonetheless continued to show that New York would contribute to downwind air quality problems. Despite the considerable emission reductions achieved by New York, EPA’s technical analysis for the CSAPR Update proposal demonstrates that New York’s emissions still have an impact on other states.

Comment 2: The NYSDEC agreed that emissions in New York contribute significantly to nonattainment or interfere with maintenance in downwind areas. However, NYSDEC states that EPA should review New York’s control program relative to what EPA might determine to be an approvable remedy rather than basing its disapproval on NYSDEC’s emission reduction estimates and the fact that New York did not quantify its significant contribution.

Response 2: In this action, EPA is rightly focused on the discrete question of whether New York has demonstrated that its SIP contains adequate provisions to prohibit significant contribution to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in downwind states. New York acknowledges in its comment, and EPA agrees, that New York’s SIP submission does not currently satisfy those requirements. As such, EPA must disapprove New York’s SIP submission for failing to satisfy the statutory requirements of CAA section 110(a)(2)(D)(i)(I). As explained in our June 21, 2016 proposal, and summarized above, New York has not demonstrated that its SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard. Furthermore, despite recent emission reductions achieved by New York, in EPA’s technical analysis for the proposed CSAPR Update, our modeling shows that New York contributes well above the air quality threshold of 1
percent of the 2008 ozone NAAQS (0.75 parts per billion) to several projected downwind nonattainment or maintenance receptors. As indicated in our proposal, EPA’s modeling shows that New York contributes 16.96 ppb to downwind receptors in Connecticut, and 17.21 ppb to downwind maintenance receptors in Connecticut and New Jersey, both of which greatly exceed the threshold contribution levels.

Comment 3: The NYSDEC stated that EPA did not provide states with a clear indication of what was required for their respective transport SIPs at the time they were due. Without this information about cross-state contributions, NYSDEC relied on control measures already in place within the state. Response 3: States have an independent responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly addresses measures that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As the Supreme Court clearly held in EPA v. EME Homer City Generation, L.P., “nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.” 134 S. Ct. 1584, 1601 (2014). Simply put, the CAA does not require EPA to quantify states’ good neighbor obligations before acting on their SIP submissions. Nevertheless, EPA did provide information to assist states with developing or supplementing their SIP submittal for the 2008 ozone NAAQS. On January 22, 2015, we issued a memorandum providing preliminary modeling information regarding potential downwind air quality problems and levels of upwind state contributions. See Memorandum from Stephen D. Page to Regional Air Division Directors, Regions 1–10, “Information on the Interstate Transport ‘Good Neighbor’ Provision for the 2008 Ozone [NAAQS] under [CAA] Section 110(a)(2)(D)(i)(I),” January 22, 2015. As we noted in our CSAPR Update proposal, the EPA also provided updated modeling and contribution information in its August 4, 2015 NODA. (80 FR 46271). All of these documents consistently indicated that the EPA’s technical analysis showed that New York emissions contribute to downwind air quality problems with respect to the 2008 ozone NAAQS, yet New York did not revise or supplement its SIP submittal with additional data demonstrating that the state had satisfied its statutory obligation.

Comment 4: NYSDEC states that EPA’s failure to implement a full remedy leaves states unsure how to satisfy their transport obligations in regard to the 2008 ozone NAAQS. NYSDEC asserts that EPA should propose a subsequent update to CSAPR by June 2017 that encompasses a full remedy. NYSDEC states that the update should include requirements for large non-EGU sources and utilize a control cost threshold that is more equitable to states.

Response 4: For the reasons stated above, this comment is outside of the scope of this action. EPA will address comments regarding the adequacy of the proposed FIP in the final CSAPR Update rule.

Comment 5: Connecticut DEEP is supportive of the proposed disapproval of New York’s SIP submission regarding prongs 1 and 2. DEEP notes that New York and Connecticut have partnered for over 40 years to provide clean air, especially in the southwest portion of Connecticut and the New York City metropolitan region, and will continue this collaboration. DEEP encourages EPA to describe, with as much specificity as possible, the steps states should take to meet their good neighbor responsibilities under the Clean Air Act. DEEP also urges EPA to immediately propose and finalize a full transport remedy for the 2008 ozone NAAQS rather than allowing compliance efforts for the 2015 NAAQS to drive compliance with the 2008 NAAQS.

Response 5: EPA is supportive of the states’ collaborative efforts to improve air quality. This action is focused on EPA’s review of New York’s infrastructure SIP submission addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) submitted for the 2008 ozone NAAQS. As noted earlier, while the EPA is not obligated to quantify state’s emission reduction obligations prior to or as part of reviewing a state’s SIP submission, we have provided data informative to the state’s development and EPA’s review of SIPs addressing these requirements with respect to the 2008 ozone NAAQS. EPA will further address state’s emission reduction obligations in the rulemaking to finalize the CSAPR Update rule.

Comment 6: The Alliance requested extension of the public comment period for the proposal to coincide with the comment period for a proposed consent decree “requiring the EPA to reject the SIP” to address a lawsuit filed by the Sierra Club in the United States District Court for the Northern District of California. We disagree that an extension of the public comment period is warranted for this action. The commenter does not provide an adequate justification why an extension is necessary. The proposed consent decree only concerns a proposed deadline by which EPA would have to act on the state’s SIP submissions under CAA section 110(k)—not the substance of that action. See 81 FR 42351 (June 29, 2016). In contrast, the June 21, 2016 proposed disapproval sought comment on a substantive action—i.e., whether to approve or disapprove New York’s submission, and on what basis.

Comment 7: The Alliance asserts that the proposed disapproval of New York’s transport SIP, the proposed consent decree mentioned in comment 6, and the CSAPR Update rule are all related and should be resolved at the same time. The Alliance states that they are concerned that one of the actions may be settled without consideration of comments associated with the other actions, and that the resulting plans for attainment may not be as cost effective, “reduction efficient” or may not significantly impact attainment. By way of example, the Alliance notes that it provided comments on the proposed CSAPR Update rule regarding errors in EPA’s supporting modeling. The Alliance contends that without finalizing the CSAPR Update rule, neither the EPA nor the commenting public is able to fully evaluate the legitimacy of the SIP disapproval. The Alliance further states that in as much as the proposed consent decree is intended to effectuate SIP disapproval, finalization of the consent decree is warranted until the full assessment of public input to the CSAPR Update rule is completed and finalized.

Response 7: EPA disagrees that the proposed disapproval of New York’s transport SIP, the proposed consent decree mentioned in comment 6, or the CSAPR Update rule should be resolved at the same time. CAA section 110(k)(2) requires EPA to act on a state’s SIP submission within one year after the
submission is determined to be complete. As indicated in the response to comment 6, the proposed consent decree with the Sierra Club governs only the timetable on which EPA would be required to act on the state’s SIP submissions under CAA section 110(k)(2)—not the substance of EPA’s action.

As described in the proposal and earlier in this document, EPA has identified several ways in which New York’s SIP submission was deficient for purposes of addressing the state’s obligation pursuant to CAA section 110(a)(2)(D)(i)(I). In particular, EPA proposed to disapprove New York’s SIP submission because the State’s modeling showed “predicted” nonattainment in other nearby states with existing measures; the submission did not demonstrate that the emission rates at which EGUs operated were the result of enforceable emission limits; the submission failed to address the State’s potential interference with maintenance (or prong 2 of section 110(a)(2)(D)(i)(I)); and the submission relied on the state’s implementation of CAIR, a rule that is no longer being implemented by the states and EPA that was declared invalid by the D.C. Circuit.

While EPA cited the modeling conducted for the proposed CSAPR Update rule as additional evidence that New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligations. Rather, the evaluation of whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA is considering submitted comments regarding EPA’s air quality modeling and various associated legal and policy decisions in finalizing that rulemaking.

EPA notes that the technical data discussed at proposal with respect to New York’s potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CSAPR (76 FR 48208), CAIR (70 FR 25162), and the NOx SIP Call (63 FR 57356), indicating that New York is frequently linked to downwind receptors. The modeling conducted to support the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages to downwind receptors. Even absent this modeling data, New York’s SIP submission is inadequate to demonstrate compliance with prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

Comment 8: The Alliance commented that, under 110(a)(2)(D)(i)(I), SIP control requirements should apply to a source category or a reasonable aggregation of emissions. The Alliance further stated that under the CSAPR Update rule, EPA unreasonably concluded that the New York electric generating unit sector budget—and only that budget—had to be revised to address significant nonattainment. The Alliance contends that the New York EGU sector emissions are not a significant contributor to neighboring state nonattainment or maintenance issues, and if EPA finalizes the SIP disapproval and finalizes the CSAPR Update rule as proposed, another round of emission reductions from the New York EGU sector will not provide any significant improvement in air quality. The Alliance concludes that it is not appropriate to consider additional reductions from EGUs until reductions are found in other sectors.

Response 8: As described in the proposal and earlier in this document, EPA has identified several ways in which New York’s SIP fails to address the prongs 1 and 2 requirements of CAA section 110(a)(2)(D)(i)(I). This action did not propose and does not finalize any remedy to address the deficiency identified in New York’s SIP submission. Rather, with respect to prongs 1 and 2, this action disapproves New York’s submission for its failure to provide sufficient analysis to support its conclusion that the state’s SIP contains adequate provisions to meet interstate transport requirements with respect to the 2008 ozone NAAQS. The evaluation of the emission reductions necessary to address the State’s significant contribution, including from which sectors such reductions might be achieved, is outside the scope of this rulemaking, and is being conducted in the context of the CSAPR Update rulemaking.

Comment 9: The Alliance cited comments submitted to the docket of the CSAPR Update rulemaking that identified alleged technical deficiencies in EPA’s modeling. The Alliance states that EPA should run its modeling using the Integrated Planning Model (IPM) 5.15 base case, and correct for other technical errors in CSAPR modeling. The Alliance questions EPA’s CSAPR Update rule’s conclusion of state linkages to downwind nonattainment (and therefore the validity of EPA’s proposed disapproval), and the expenditure of significant state and EGU resources on developing revised SIPs and modifying controls based on an outdated modeling platform. The Alliance also states that regulated entities are not being given appropriate notice and opportunity to comment on the SIP disapproval when EPA has not yet completed modeling for the final CSAPR Update rule. The Alliance concludes that the correction of errors will demonstrate that the CSAPR Update rule, which EPA is relying on to disapprove New York’s SIP, results in over-control.

Response 9: As noted earlier in this document, EPA will consider timely submitted comments regarding EPA’s air quality modeling, the modeling platform, and state linkages to downwind nonattainment for the CSAPR Update in the context of that rulemaking, not this one.

With respect to this rulemaking, EPA disagrees with the commenter that we are only relying on CSAPR modeling to disapprove the State’s SIP. As we have previously noted, EPA has identified several ways in which New York’s SIP submission is deficient for purposes of addressing the State’s obligations under CAA section 110(a)(2)(D)(i)(I). While EPA cited the modeling conducted for the CSAPR Update as additional evidence that New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligations. Rather, EPA is conducting its evaluation of whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind and, if so, what reductions are necessary to address that contribution, in the context of the CSAPR Update rulemaking.

EPA therefore disagrees with the commenter that appropriate notice and comment to regulated entities on the proposed SIP disapproval has not been provided since the CSAPR Update modeling has not been finalized. EPA provided a 30 day comment period on the proposed disapproval (see 81 FR 40229). EPA has also provided appropriate public notice and comment for the CSAPR Update rule (see 80 FR 75706). Moreover, there are no regulated entities under this action as this action merely disapproves the portion of New York’s SIP addressing CAA section...
used annual or ozone season emissions for their projections and in both instances the observed reductions from 2007 to 2015 are greater than the reductions used by NYSDEC. The Alliance concludes that the EPA basis for the SIP disapproval is incorrect.

The Alliance also notes that EPA claimed that New York did not demonstrate that the emission rates at which EGUs operated in the state are the result of enforceable emission limits or other mandatory programs such that the emission rate will not increase. The Alliance notes that the NOx emission trends show a marked decrease in 2014 when New York’s revised RACT limits become effective, resulting in an annual NOx rate decrease of 52% and an ozone season rate decrease of 42%. The Alliance states that the comparison of daily NOx emissions from 2007 to 2015 shows that New York’s revised NOx RACT limits did have an enforceable impact. The Alliance also notes that coupled with the number of recent retirements at other New York facilities, it is extremely unlikely that NOx emission rates could increase substantially.

Response 11: EPA agrees with the commenter that NOx emissions and emission rates in New York have been trending downward since 2007. EPA also agrees that due to New York’s stringent 2014 RACT emission limits—which EPA approved into the SIP and, as such, are federally enforceable—there are enforceable limits on NOx emissions from EGUs and other large boilers regulated under New York’s RACT rules. New York’s RACT rules also make it unlikely that emission rates from those sources will increase above the levels permitted by the emissions limits.

As an initial matter, EPA notes that the Alliance based its analysis only on a subset of New York’s emissions data (from EPA’s Clean Air Markets database), whereas New York’s modeling was based on a much larger emission inventory (projected 328,457 tons of NOx emissions, and 368,784 tons of VOC emissions from overall state emissions in 2020).

Most importantly, EPA notes that New York’s RACT rules were factored into New York’s modeling as well as EPA’s base case modeling. Despite emission reductions from New York’s RACT regulations, as noted previously in this document, EPA modeling still shows a very large contribution to downwind nonattainment and maintenance receptors from New York (i.e., over twenty times the threshold concentrations). New York’s modeling also showed nonattainment problems in nearby states. Thus, New York has not demonstrated that its RACT rules are sufficient to address the state’s significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states.

Response 12: EPA agrees that there is a relationship between New York NOx emissions and ozone concentrations in Fairfield, Connecticut. This relationship supports EPA’s finding that reductions in New York NOx emissions are needed to help lower ozone concentrations in Fairfield, Connecticut and at other downwind nonattainment and maintenance sites in Connecticut to which New York is linked. Ozone concentrations in Fairfield, Connecticut are dependent upon a number of factors including NOx emissions from EGUs and other upwind sources of NOx and VOC emissions, as well as local emissions in Connecticut. Inter-annual variability in meteorology is a principal factor in determining year-to-year differences in the magnitude of ozone concentrations. In this respect, the fact that the relationship between New York NOx emissions and ozone in Fairfield, Connecticut is different in 2007 compared to 2015 does not disprove the contributions of New York NOx emissions to high ozone concentrations in Fairfield, Connecticut.

IV. What action is EPA taking?

EPA is disapproving a portion of the April 4, 2013 SIP submittal from New York pertaining to the requirements of CAA section 110(a)(2)(D)(i)(I) regarding interstate transport of air pollution that will significantly contribute to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states, known as prongs 1 and 2 of the good neighbor provision.
EPA is approving the portion of the April 4, 2013 SIP submittal from New
York pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II)
requirement for visibility (or prong 4).

We expect to take action on the other portions of New York’s infrastructure
SIP at a later date.

V. What are the consequences of a
disapproved SIP?

Pursuant to CAA section 110(c)(1),
this disapproval establishes a 2-year
deadline for the EPA to promulgate a
FIP for New York addressing the
requirements of CAA section
110(a)(2)(D)(i)(II) with respect to the
2008 ozone NAAQS unless New York
submits and we approve a SIP that
meets these requirements. Disapproval
does not start a mandatory sanctions
clock for New York pursuant to CAA
section 179 because this action does not
tertain to a part D plan for
nonattainment areas required under
CAA section 110(a)(2)(I) or a SIP call
pursuant to CAA section 110(k)(5).

VI. Statutory and Executive Order
Reviews

A. Executive Order 12866: Regulatory
Planning and Review

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

B. Paperwork Reduction Act (PRA)

This final action does not impose an
information collection burden under the
PRA because it does not contain any
information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have
a significant economic impact on a
substantial number of small entities
under the RFA. This rule does not
impose any requirements or create
impacts on small entities. This partial
SIP approval and partial SIP
disapproval under CAA section 110 will
not in-and-of itself create any new
requirements but simply approves and
disapproves certain state requirements
for inclusion into the SIP.

D. Unfunded Mandates Reform Act
(UUMRA)

This action does not contain any
unfunded mandate as described in
UMRA, 2 U.S.C. 1531–1538, and does
not significantly or uniquely affect small
governments. The action imposes no
enforceable duty on any state, local or
tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism
implications. It will not have substantial
direct effects on the states, on the
relationship between the national
government and the states, or on the
distribution of power and
responsibilities among the various
levels of government.

F. Executive Order 13175: Consultation
and Coordination With Indian Tribal
Governments

This action does not have tribal
implications as specified in Executive
Order 13175. This action does not apply
on any Indian reservation land, any
other area where the EPA or an Indian
tribe has demonstrated that a tribe has
jurisdiction, or non-reservation areas of
Indian country. Thus, Executive Order
13175 does not apply to this action.

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

The EPA interprets Executive Order
13045 as applying only to those
regulatory actions that concern
environmental health or safety risks that
the EPA has reason to believe may
disproportionately affect children, per
the definition of “covered regulatory
action” in section 2–202 of the
Executive Order. This action is not
subject to Executive Order 13045
because it merely partially approves and
partially disapproves a SIP submittal
from the State of New York.

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

This action is not subject to Executive
Order 13211, because it is not a
significant regulatory action under
Executive Order 12866.

I. National Technology Transfer and
Advancement Act

This rulemaking does not involve
technical standards.

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

EPA believes the human health or
environmental risk addressed by this
action will not have potential
disproportionately high and adverse
human health or environmental effects
on minority, low-income or indigenous
populations because it does not affect
the level of protection provided to
human health or the environment. This
action merely partially approves and
partially disapproves a SIP submittal
from the State of New York.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and
EPA will submit a rule report to each
House of the Congress and to the
Comptroller General of the United
States prior to publication of the rule in the
Federal Register. A major rule
cannot take effect until 60 days after it
is published in the Federal Register.
This action is not a “major rule” as
defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA,
petitions for judicial review of this
action must be filed in the United States
Court of Appeals for the appropriate
circuit by October 25, 2016. Filing a
petition for reconsideration by the
Administrator of this final rule does not
affect the finality of this action for the
purposes of judicial review nor does it
extend the time within which a petition
for judicial review may be filed, and
shall not postpone the effectiveness of
such rule or action. This action may not
be challenged later in proceedings to
enforce its requirements. (See CAA
section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air
pollution control, Intergovernmental
relations, Incorporation by reference,
Nitrogen dioxide, Ozone, Volatile
organic compounds.

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

Dated: August 12, 2016.

Judith A. Enck,
Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND
PROMULATION OF
IMPLEMENTATION PLANS

§ 52.1670 Identification of plan.

(e) * * *

Subpart HH—New York

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

Section 52.1670(e), is amended by
adding an entry for “Section 110(a)(2)
Infrastructure Requirements for the 2008
ozone NAAQS” at the end of the table
to read as follows:

§ 52.1670 Identification of plan.

* * *
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of Emissions of Volatile Organic Compounds From the Reynolds Consumer Products LLC—Bellwood Printing Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia (Virginia) state implementation plan (SIP). The revision would remove a consent agreement and order (consent order) previously included in the Virginia SIP to address reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) control at the Reynolds Consumer Product LLC (Reynolds) plant and include a state operating permit in the SIP to continue to address RACT requirements for the Reynolds plant. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 25, 2016 without further notice, unless EPA receives adverse written comment by September 26, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

Federal Register and inform the public that the rule will not take effect.

Federal Register and inform the public that the rule will not take effect.

Federal Register and inform the public that the rule will not take effect.

ADDRESS: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0233 at http://www.regulations.gov, or via email to fernandez.cristina@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, the 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. The 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, further information contact’’ section.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP. The SIP revision submittal seeks to include state operating permit conditions and terms for the control of emissions of VOCs from Reynolds’ plant located in Chesterfield, Virginia, in the Richmond Area, in order to address VOC RACT requirements for Reynolds.

Previously, VOC RACT requirements for Reynolds were addressed via inclusion in the Virginia SIP of a Consent Order between VADEQ and Reynolds. This SIP revision submittal seeks to remove the prior Reynolds’ consent order included in the SIP and replace it with nearly identical VOC RACT requirements now contained for the Reynolds’ plant in a state operating permit. The SIP revision submittal also contains minor administrative and technical changes related to VOCs compared to the Reynolds’ consent order; however, the substantive provision of VOC RACT remains the same for the Reynolds’ plant, thus the minor administrative and technical changes have no effect on facility operation, VOC emissions, or air quality.

The Virginia SIP provides that the Commonwealth of Virginia’s State Air Pollution Control Board must, on case-by-case basis, determine RACT for VOCs from major sources for which EPA has not issued a control technology guideline (CTG). EPA defines RACT as the “lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” 44 FR 35761 (September 17, 1979). The Richmond Area was originally designated as a “moderate” ozone nonattainment area under the 1-hour ozone national ambient air quality standard (NAAQS), and thereby had to meet the non-CTG RACT requirements under section 182 of the CAA (56 FR 56694, November 6, 1991). Reynolds’ printing plant was identified as being subject to non-CTG RACT. The facility underwent a RACT analysis, and a federally-enforceable consent order was issued to the facility on October 30, 1986. The order was then submitted to EPA as a SIP revision, and approved into the Commonwealth’s SIP on June 6, 1996 (61 FR 29963).

II. Summary of SIP Revision

The SIP revision removes the prior Reynolds’ consent order included in the