

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on the Missouri River from MM 27 to 366. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08-0112 to read as follows:

§ 165.T08-0112 Safety Zone; Missouri River, Mile Markers 27 to 366.

(a) *Location.* The following area is a safety zone: all navigable waters within the Missouri River from Mile Marker 27 to 366.

(b) *Enforcement period.* This section will be subject to enforcement from July 5, 2024, to July 10, 2024.

(c) *Regulations.* (1) In accordance with the general safety zone regulations in § 165.23, entry of persons or vessels into the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port

Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF-FM channel 16, or through USCG Sector Upper Mississippi River at 314-269-2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: July 5, 2024.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port, Sector Upper Mississippi River.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0302; FRL-12064-03-R3]

Air Plan Approval; Pennsylvania; Interim Final Determination To Stay and Defer Sanctions Related to Reasonably Available Control Technology Requirements for Keystone, Conemaugh, Homer City and Montour Generating Facilities for the 1997 and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination (IFD) that Pennsylvania has submitted revisions to the SIP that satisfy the requirements under the Clean Air Act (CAA) to implement RACT for these EGUs for the 1997 and 2008 ozone NAAQS. The effect of this IFD is to stay emission offset sanctions and defer the imposition of highway funding sanctions triggered by an August 2022 EPA partial disapproval of a prior

Pennsylvania SIP addressing RACT for these EGUs. Proposed elsewhere in this issue of the **Federal Register**, EPA is proposing approval of a revision to Pennsylvania's State implementation plan (SIP), as submitted April 10, 2024, to address reasonably available control technology (RACT) nitrogen oxides (NO_x) emission limits and requirements for the coal-fired electric generating units (EGUs) equipped with selective catalytic reduction (SCR) at the Keystone, Conemaugh, Homer City, and Montour facilities for the 1997 and 2008 ozone national ambient air quality standards (NAAQS).

DATES: This interim final determination is effective on July 10, 2024. However, comments will be accepted until August 9, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0302 at www.regulations.gov, or via email to gould.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. EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2024-0302. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Sean Silverman, 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) 814-5511. Mr. Silverman can also be reached via electronic mail at silverman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 2022, EPA took final action to disapprove portions of a Pennsylvania SIP revision submitted May 16, 2016 that, among other things, established NO_x emission limitations for the coal-fired EGUs equipped with SCR at the Keystone, Conemaugh, Homer City, and Montour facilities, to satisfy RACT obligations for the 1997 and 2008 ozone NAAQS. 87 FR 50257. EPA's August 16, 2022 final disapproval started a sanctions clock under CAA section 179 and 40 CFR 52.31. The two-to-one new source emissions offset sanction took effect on March 15, 2024 (18 months following the September 15, 2022 effective date of the August 16, 2022 disapproval), while highway funding sanctions will take effect September 15, 2024 unless the state submits, and EPA approves, SIP revisions that correct the deficiencies identified in the August 16, 2022 disapproval action.

On August 31, 2022, EPA issued a Federal implementation plan (FIP) addressing these same RACT obligations. 87 FR 53381. On May 2, 2024, the Third Circuit issued a decision upholding the RACT limits and other requirements in EPA's August 31, 2022 FIP. *Keystone-Conemaugh Projects LLC v. EPA, et al.*, No. 22-3026. The court decided and resolved all issues raised by the Petitioners in EPA's favor.

On April 10, 2024, PADEP submitted two SIP revisions which adopt the NO_x limits and other requirements in EPA's final August 31, 2022 FIP for Keystone, Conemaugh, Homer City, and Montour. Proposed elsewhere in this issue of the **Federal Register**, EPA has proposed to approve Pennsylvania's April 10, 2024 SIP revisions. There, EPA proposes to find that the incorporation of title V permits containing the FIP requirements into Pennsylvania's SIP addresses the

deficiencies identified in EPA's August 16, 2022 partial disapproval, which started the sanctions clock for offset and highway sanctions in Pennsylvania.

II. What action is EPA taking?

We are making an interim final determination to stay the application of the offset sanction and defer the application of the highway sanction associated with our August 16, 2022 disapproval of certain RACT requirements for the 1997 and 2008 ozone NAAQS for Pennsylvania. This determination is based on our concurrent proposal to approve the Pennsylvania SIP revisions regarding RACT limits for the 1997 and 2008 Ozone NAAQS for Keystone, Conemaugh, Homer City, and Montour generating facilities, which resolve the deficiencies that triggered sanctions under section 179 of the CAA.

Because EPA has preliminarily determined that the submission of the Pennsylvania RACT SIP revisions address the deficiencies identified in the August 16, 2022 disapproval action and is likely approvable, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(B)). However, by this action, EPA is providing the public with an opportunity to comment on the EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse the interim final determination.

Section 553(b)(B) of the APA provides that the notice and opportunity for comment requirements do not apply when the Agency finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In this instance, EPA believes it would be both impracticable and contrary to the public interest to have to propose and provide an opportunity to comment before any relief is provided from the effect of sanctions. EPA has reviewed Pennsylvania's SIP submissions addressing the August 16, 2022 disapproval and, through its proposed action, is indicating that it is more likely than not that the SIP submissions correct the deficiency that was the basis for the disapproval action that started the sanctions clock. Therefore, it is not in the public interest to apply sanctions. EPA believes that it is necessary to use the interim final rulemaking process to stay the application of the offset sanction and defer the application of the highway

funding sanction while we complete our rulemaking process on the approvability of Pennsylvania's SIP revision intended to address the RACT requirements for the EGUs at the four sources for the 1997 and 2008 ozone NAAQS.

Consistent with 5 U.S.C. 553(d)(1) of the APA, EPA finds there is good cause for this action to become effective immediately upon publication. Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this action relieves a restriction, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

As noted above, proposed elsewhere in this issue of the **Federal Register**, EPA has proposed to find that Pennsylvania's April 10, 2024 SIP revisions address the deficiencies identified by EPA in our August 16, 2022 final disapproval. In accordance with 40 CFR 52.31(d)(2)(ii), when a State has submitted a revised plan to correct the deficiency, and EPA proposes to approve the plan and issues an interim final determination that the revised plan corrects the deficiency, application of the new source emission offset sanction shall be stayed and application of the highway sanction shall be deferred. However, if issues are raised during the public comment period of the proposed plan approval which cannot be addressed and the revised plan is ultimately disapproved, the new source offset sanction shall reapply immediately and the highway sanction shall apply immediately on the date of the final disapproval if that date is more than six months after the date the offset sanctions became effective, which was March 15, 2024.

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action 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).

- Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

Executive Order 12898 (59 FR 7629, February 16, 1994), directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

This interim final determination does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action stays emission offset sanctions and defers the imposition of highway funding sanctions triggered by an August 2022 EPA partial disapproval of a prior Pennsylvania SIP addressing RACT for these EGUs. This action therefore does not directly address emission limits or otherwise directly affect any human health or environmental conditions in Pennsylvania. In addition, EPA is providing meaningful involvement on this rulemaking through the notice and comment process.

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 September 9, 2024. Filing a petition for reconsideration by the EPA Administrator of this final determination does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

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