which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP CA E5 Tulare, CA [New]

Mefford Field Airport, CA
(lat. 36°9′24″ N, long. 119°19′36″ W)

That airspace extending upward from 700 feet above the surface within 1.8 miles each side of the 142° bearing from the airport extending to 6.4 miles southeast of the airport, and within 1.8 miles each side of the 322° bearing from the airport extending to 6.4 miles northwest of the airport.

Issued in Des Moines, Washington, on February 27, 2023.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–04586 Filed 3–6–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2021–0005; FRL–8683–02–R8]

Air Plan Approval; North Dakota; Revisions to Permitting Rules; and Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by North Dakota on August 3, 2020. The revisions contain amendments to the State's Ambient Air Quality Standards, Permit to Construct, and Prevention of Significant Deterioration (PSD) regulations. In addition, we are correcting the citation to a revision to North Dakota Administrative Code (NDAC) section 33.1–15–20–04.4. In our proposal, we provided the incorrect citation to section 33.1–15–20–04.3.

DATES: This final rule is effective on April 6, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2021–0005. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6227, email address: *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The EPA is taking final action to approve the SIP amendments to the North Dakota Administrative Code (NDAC), which North Dakota submitted to EPA on August 3, 2020. These amendments to the NDAC are found in Article 33.1–15 (Air Pollution Control) and include revisions to Chapter 33.1–15–01 (General Provisions), Chapter 33.1–15–02 (Ambient Air Quality Standards, Table 1), Chapter 33.1–15–03 (Restriction of Emission of Visible Air Contaminants), Chapter 33.1–15–14 (Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V to Operate), Chapter 33.1–15–15 (Prevention of Significant Deterioration of Air Quality), Chapter 33.1–15–19 (Visibility Protection), and Chapter 33.1–15–20 (Control of Emissions from Oil and Gas Well Production Facilities). Revisions to Chapter 33.1–15–25 (Regional Haze Requirements) were acted on in a separate rulemaking.[1] North Dakota is also revising Chapter 2 Section 2.15 (Respecting Boards) located in North Dakota's EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures.

In addition to taking final action approving North Dakota's revisions, we are also correcting an error in citation we made in our proposal for the revision to section 33.1–15–10–04.4. In our **Federal Register** document 86 FR 41413, appearing on page 41415 in

[1] The EPA approved North Dakota's rule revisions to chapter 33.1–15–25 (regional haze) on June 8, 2021 (86 FR 30387).

section G, subchapter 2, second asterisk, section 33.1–15–20–04.3 should have read section 33.1–15–20–04.4. We consider this error to be a typographical error, which we believe did not have a deleterious effect on the public's ability to comment on the substance of the revision. This is supported by the fact that the revision description in our proposal with the incorrect citation matches the description of the revision in North Dakota's SIP submittal containing the correct citation to section 33.1–15.20–04.4 which was made available in our docket. In addition, we drew a comment on the provision with the commenter providing the correct citation to section 33.1–15–.20–04.4.

Our August 21, 2021, proposed rulemaking contains a detailed summary of the SIP revisions in question and explains the bases for our proposed approval.[2] We invited comment on all aspects of our proposal, and provided a 30-day comment period, which was extended and ended on October 4, 2021.[3]

II. Response to Comments

We received comments from the Center for Biological Diversity on October 4, 2021. The comments focused on the four revisions to chapter 33.1–15–20 titled ''Control of Emissions from Oil and Gas Well Production Facilities.'' [4] The four revisions will be discussed in more detail in the responses.

The summary of the comments and our responses are provided below. The full text received from the commenter is included in the docket associated with this action.

Comment: Minor sources have the potential to impact the National Ambient Air Quality Standards (NAAQS) and threaten public health. Emissions from the oil and gas industry include a number of pollutants that are linked to serious health effects. The Dakota Resource Council has documented oil and gas pollution's impacts on North Dakota's families. According to the ''North Dakota Oil and Gas Threat Map,'' the area of highest oil and gas also has the highest negative health impacts. This area includes environmental justice communities both on North Dakota state land and the Fort Berthold Reservation. Considering the adverse impacts already experienced by these communities, EPA must work with the State to meaningfully strengthen the SIP provisions, using science and available cost-effective measures to control the criteria and hazardous air pollutants to deliver environmental justice to the Fort Berthold and other impacted communities.

Response: As an agency, we strive to incorporate environmental justice considerations into our actions and decisions to the extent possible. As explained in more detail below, we do not expect negative environmental consequences, nor do we expect disproportionate human health or environmental effects on environmental justice communities because the revisions being proposed include both revisions that are administrative in nature and revisions that are not expected to result in an increase in emissions of air contaminants that could impact the environment.

Comment: The revisions proposed to section 33.1–15–20–04.3 are not administrative in nature. The State's proposed change to section 33.1–15–20–04.3 amends the pollutants covered by the rule from volatile organic compound gases to organic compound gases. This change is substantive. While there is a definition for volatile organic compounds, there is no definition for 'organic compound gases' and it is unclear what group of gases this phrase references.

Response: We do not agree with commenter's assessment that the two revisions to North Dakota's section 33.1–15–20–04.3 are substantive. North Dakota made two revisions to chapter 33.1–15–20–04.3. First, the term ''volatile'' was removed prior to ''organic compound gas(es) and vapor(s)'' from the provision so that it now reads, ''Any organic gases and vapors may be subject to controls specified in chapter 33.1–15–07.'' Chapter 33.1–15.07 addresses control of organic compounds emissions. Chapter 33.1–15–07 uses the term ''volatile organic compound'' but does not use the term ''volatile organic compound *vapor and gas* [emphasis added].'' Section 33.1–15–07–02 specifically addresses ''gases and vapors'' and in particular ''organic compound gases and vapors'' but does not use the term ''volatile organic compound gas(es) and vapor(s).'' Because North Dakota uses the terms ''volatile organic compound'' and ''organic compound gases and vapors'' in chapter 33.1–15–07 and not ''volatile organic compound gas(es) and vapor(s),'' it is reasonable to assume that the edits North Dakota proposed is to correct an error in the language of the regulation whereby North Dakota incorrectly referred to ''volatile organic compound gas and vapor'' when it meant ''organic compound gases and vapors'' so that chapter 33.1–15–07 aligns with section 33.1–15–20–4.3 which the provision references. Therefore, we characterized this change in our proposal as administrative since the edits to section 33.1–15–20–4.3 reflect a desire to align language between section 33.1–15–20–4.3 and chapter 33.1–15–07 for ''organic compound gases and vapors.''

The commenter is correct that the Air Pollution Control Regulations (Article 33.1–15) does not define what organic compound gases and vapors are, but the Air Pollution Control Regulations do control the emissions of organic compounds including organic compound gases and vapors as found in chapter 33.1–15–07. Without the proposed revision to chapter 33.1–15–20–4.3 by North Dakota, it is possible that it would not be clear to the public that organic compound gases and vapors under chapter 33.1–15–20–4.3 may be also subject to chapter 33.1–15–07 and in particular with section 33.1–15–07–02 of chapter 33.1–15–07 which specifically regulates organic compound gases and vapors. That is why EPA proposed approval under a rationale that this change was administrative in nature which clarified chapter 33.1–15–20.4.3 to align with its corollary chapter 33.1–15–07.

The second revision to chapter 33.1–15–20–4.3 is the pluralizing of gases and vapors by adding ''es'' and ''s'' to gas and vapor. Pluralizing a word is considered purely administrative in nature since the only impact is that we are changing gas and vapor from singular to plural which does not impact the meaning of the terms ''gas'' and ''vapor.''

Comment: We believe that the revisions proposed to section 33.1–15–20–04.4 are not administrative in nature. Section 33.1–15–20–4.4 requires routine inspections and maintenance of certain listed equipment ''used for gas containing hydrogen sulfide (H_2S).'' The proposed revision would apparently expand the rule to cover routine inspection and maintenance of equipment regardless of the type of pollutants emitted. This would mean the rule covers all pollutants emitted at a production facility, not just H_2S. This would be an improvement of air quality if the rule were enforceable, but we don't believe the rule is enforceable since there are no required recordkeeping and reporting requirements for this provision. In addition, the definition of production facility found in section 33.1–15–20–

[2] *See* 86 FR 41413.

[3] We published a correction to the proposed rule and extended the comment period due to an incorrect docket citation. See 86 FR 49500 (Sept. 3, 2021).

[4] Chapter 33.1–15–20 is also commonly referred to as the oil and gas registration rule.

01.2 is more expansive than the list of equipment covered by the current rule for routine inspection and maintenance. Expanding the coverage of a vague rule is not an administrative change.

Response: We agree with the commenter that the proposed change to section 33.1–15–20–04.4 is not administrative in nature. Previously section 33.1–15–20–04.4, provided that ''Routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements and couplings must be conducted to minimize emissions from equipment used for gas containing hydrogen sulfide (H_2S) . . .'' North Dakota's revision to section 33.1–15–20–04.4 removes the phrase ''used for gas containing hydrogen sulfide (H_2S)'' and replaces it with ''production facility'' so that the provision now reads as follows: ''routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements, and couplings must be conducted to minimize emissions from equipment *at a production facility.* Tank hatches must hold a positive working pressure or must be repaired or replaced.'' Chapter 33.1–15–20–01 provides the definition of ''production facility'' to include'' all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary nontransportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties, and are under the control of the same person (or persons under common control).''

By changing to requiring routine inspections of equipment to minimize emissions at a production facility, North Dakota is also requiring routine inspections to minimize emissions of volatile organic compounds and carbon monoxide as well as hydrogen sulfide since those are the expected air contaminants from an oil and gas production facility. This revision strengthens this provision and does not weaken the SIP since it expands the equipment that are subject to this regulation. The commenter is also correct that the definition of production facility as spelled out in the definition section found in chapter 33.1–15–20–01–2.n is more expansive than the prior term ''equipment used for gas containing hydrogen sulfide'' in this section. Chapter 33.1–15–20–01–2.n defines ''production facility'' as ''all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines and auxiliary nontransportation-related equipment used in exploration, development, or subsequent production or handling of oil and gas from an oil and gas well or wells which are located on one or more contiguous or adjacent surface properties, and are under the control of the same person (or persons under common control).'' By expanding the definition of equipment at oil and gas facilities that emit air contaminants, and not necessarily hydrogen sulfide, this expands the equipment that is subject to routine inspection to include oil storage tanks, control flares at storage tanks, casing head gas, generators, tank and heaters, and valves and flanges. Because the revision to section 33.1–15–20–04.4 expands the equipment subject to inspection and maintenance, we are expecting better running equipment and prevention of unplanned emissions of air contaminants. Thus, we believe the revision to section 33.1–15–20–4.4 is more stringent than the previous iteration.

As to the comment that this chapter is not enforceable because it does not have required recordkeeping and reporting requirements, the commenter is correct that section 33.1–15–20–4.3 does not contain recordkeeping and reporting requirements. Both the proposed revision and the previous version of section 33.1–15–20–4.3 do not address recordkeeping and reporting requirements. Recordkeeping and reporting requirements are provided in North Dakota's chapter 33.1–15–20–02, and North Dakota did not submit, and we are not acting on revisions to chapter 33.1–15–20–02.[5] Therefore, we cannot agree with commenters statement that chapter 33.1–15–20–4.3 is not enforceable because there is no required recordkeeping and reporting requirements since the recordkeeping and reporting requirements are found in chapter 33.1–15–20–02 and they have not been revised since their prior approval in 2019.

As to the commenter's comment about the enforceability of this requirement, enforcement of North Dakota's Air Pollution Control regulation including chapter 33.1–15–20 Control of Emissions from Oil and Gas Well Production Facilities are administered by chapter 33.1–15–01 General Provisions. Specifically, section 33.1–15–01–17 regulates enforcement of North Dakota's Air Pollution Regulations including chapter 33.1–15–20. For this rulemaking, North Dakota did not submit nor are we acting on North Dakota's section 33.1–15–01–17 addressing enforcement of North Dakota's Air Pollution Regulations.

Comment: Expanding coverage of section 33.1–15–20–4.2 to cover all air contaminants as opposed to just sulfur dioxide (SO_2) for flare stack height requirements is not a basis for approval as EPA suggests in its proposal. Neither EPA's nor the State's proposal discloses what other air contaminants are covered and what-if any-stack height rules apply to the expanded list of all air contaminants.

In addition, EPA's proposed approval of these revisions do not apply EPA's stack height requirements for new sources under New Source Review (NSR). In light of the broad applicability of the registration rule revisions that not only include oil and gas wells, EPA must ensure that the stack height requirements apply to the sources that are exempt from the NSR permit process, which EPA has not done.

We also think that the proposed rule revision expands the coverage of the rule to more pollutants and more emitting units and source of emissions which contradicts the permitting requirements to determine what constitutes the stationary source. The outcome is that the proposed rule allows the owner/operator of a unit covered by the rule to subdivide what should be aggregated into a major source into many smaller units and escape major source permitting.

Response: We do not agree with commenter's statement that expanding coverage for flare stack height requirements in section 33.1–15–20–4.2 to cover all air contaminants versus covering just SO_2 should not be a basis for approval. Generally, we consider expanding regulatory coverage to address all air contaminants to be more protective than the previous iteration of the requirement. In our case, North Dakota submitted revisions to section 33.1–15–20–4.2 (requirements for control of production facility emissions) replacing ''sulfur dioxide'' with ''air contaminants.'' Section 33.1–15–20–4.2 now reads ''each flare used for combusting gas at a production facility must be equipped and operated with an automatic igniter or a continuous burning pilot which must be maintained and operated in good working order. This is required even if the flare is used for emergency purposes only. A continuous burning pilot is required if this department determines that an automatic ignition system is ineffective due to production characteristics. The flare stack must be of sufficient height to allow for adequate dispersion of air contaminants as necessary to meet the requirements of this article.''

[5] We approved North Dakota's chapter 33.1–15–20.02 recordkeeping and reporting requirements in 2019. See 84 FR 1610 (Feb. 5, 2019)

The commenter is correct that section 33.1–15–20–04.2 does not spell out what air contaminants are covered under this section but ''air contaminants'' are defined in the Air Pollution Control general provisions definitions section found in section 33.1–15–01–4.2. The general provisions definitions in section 33.1–15–01 are applicable to all of chapter 33.1–15 including section 33.1–15–01–4.2. Under the NDAC section 33.1–15–01–4.2, '''air contaminant' is defined as ''any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.''

As to the commenter's concerns that the revision doesn't provide clarity on what stack height rules apply to the expanded list of air contaminants, we do not believe that North Dakota's replacement of ''hydrogen sulfide'' with ''air contaminants'' for flare stack height requirements impacts the clarity of the proposed revision to section 33.1–15–20–4.2. The original language reads ''flare stack must be of sufficient height to allow for adequate dispersion of hydrogen sulfide as necessary to meet the requirement of this article.'' The revised language now reads ''flare stack must be of sufficient height to allow for adequate dispersion of air contaminants as necessary to meet the requirements of this article.'' The rule revision is not regulating additional criteria pollutants because there is no change in the pollutants being emitted. The rule revision is rather clarifying that the rule applies to all pollutants, not just hydrogen sulfide. Thus, there are no new emissions sources to be evaluated and the flare stack height is not impacted from the revision to section 33.1–15–20–4.2.

The commenter is correct that this revision relating to flare stacks does not apply to EPA's stack height requirements for new sources under NSR. This is not an issue because stack height requirements for new sources under NSR are governed by chapter 33–15–18. In addition, stack height requirements for new sources under NSR specifically state that stack height requirements do not apply to flare stacks. This is true both for the federal NSR program and North Dakota's federally approved NSR program.[6] The commenter appears to confuse the stack height requirements under NSR and flare stacks.

We do not agree with the commenter that the rule revision to section 33.1–15–20–4.2 expanding the coverage of the stack height requirements to all pollutants under the flare rule contradicts permitting requirements to determine what constitutes a stationary source or that the proposed rule allows the owner/operator of a unit covered by the rule to subdivide what should be aggregated into a major source into many smaller units and escape major source permitting. The commenter is correct that the revision to section 33.1–15–20–4.2 expanding to all pollutants will mean that more emitting units and source of emissions will be subject to section 33.1–15–20–4.2. However, it is not clear how the commenter connects being subject to section 33.1–15–20–4.2 results in North Dakota's stationary source requirements being circumvented or escaping major source requirements. North Dakota's stationary source and permitting requirements are governed by chapter 33.1–15–14 titled ''Designated Air Sources, Permit to Construct, Minor Source Permit to Operate, and Title V to operate.'' Specifically, section 33.1–15–14–06.1.bb defines ''stationary sources'' for permitting purposes as ''any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the federal Clean Air Act.'' In addition, section 33.1–15–14–06.1.q defines ''major source'' for permitting purposes as the same definition of ''major source'' under title V of the CAA. North Dakota did not submit revisions to section 33.1–15–14–06, nor did EPA propose to act on section 33.1–15–14–06 in this action. We fail to see how the revision to section 33.1–15–20–4.2, which requires a flare stack to be of sufficient height to allow for adequate dispersion of all air contaminants versus just flare stacks that emit hydrogen sulfide, revises the permitting requirements for stationary sources and major source permitting found in Chapter 33.1–15–14.

Comment: EPA's proposed approval of the State's revisions to chapter 33.1–15–20, also known as the oil and registration rule[7] did not include a CAA section 110(l) demonstration. Expanding control measures to cover additional equipment and all pollutants triggers section 110(l) review because the registration rule is a stationary source per section 110(i). Section 110(i) requires that SIP requirements for stationary sources must undergo the SIP revision process, which in turn requires EPA to determine that the requirement in section 110(l) is met, including non-interference with attainment and maintenance of the NAAQS.

Response: In accordance with CAA Section 110(l), EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA 110(l) does not require a state to conduct a 110(l) analysis for every action; rather, CAA 110(l) requires that the Administer shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The EPA evaluated North Dakota's submittal containing the four revisions to chapter 33.1–15–20 (one revision to section 33.1–15–20–4.2, two revisions to section 33.1–15–20–4.3, and one revision to section 33.15–20–4.4) on which we received comments for interference with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

North Dakota proposed a revision to section 33.1–15–20–4.2 which North Dakota expanded flare stack height requirements to include ''adequate dispersion of air contaminants as necessary to meet the requirements of this article.'' Section 33.1–15–20–4.2 was formerly limited to stack height for adequate dispersion of hydrogen sulfide. The rule revision is not regulating additional criteria pollutants because there is no change in the pollutants being emitted, rather, it is clarifying that the rule applies to all pollutants, not just hydrogen sulfide. Thus, there are no new emissions sources to be evaluated, and the commenter has not identified a specific emissions increase that would require a 110(l) evaluation. The rule continues to specify that the stack must be designed with sufficient height to allow for adequate dispersion of all air contaminants. Thus, we do not believe that the revision to section 33.1–15–20–4.2 will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

North Dakota proposed two revisions to section 33.1–15–20–4.3. First, North Dakota removed the term ''volatile'' when referencing ''organic compound gas and vapor.'' North Dakota removed the term ''volatile'' to align with the language in chapter 33.1–15–07 since section 33.1–15–20–4.3 specifically references chapter 33.1–15–07. Section 33.1–15–20–4.3 states that ''any organic compound gases and vapors may be subject to controls as specified in chapter 33.1–15–07. Secondly, North

[6] See 40 CFR 51.118 and NDAC section 33.1–15–18 for the federal requirements for stack height (not including flare stacks) and North Dakota's corollary provision.

Dakota pluralized gas''es'' and vapor''s'' in section 33.1–15–20–4.3. As explained in more detail in our previous response, we consider the deletion of ''volatile'' aligning the two corollary provisions of section 33.1–15–20–4.3 and chapter 33.1–15–07 as well as the pluralization of gas and vapor to be administrative in nature and thus, we do not anticipate impacts to applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement under the CAA.

North Dakota also proposed a revision to chapter 33.1–15–20–4.4 in which the term ''used for gas containing hydrogen sulfide'' was replaced with ''at a production facility'' for routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements and couplings . . . to minimize emissions from equipment at a production facility. We do not expect to see an increase in emissions of any pollutant or interfere with attainment and reasonable further progress requirements because increased routine inspection and maintenance increases the opportunity to identify and fix and/or prevent fugitive emissions and does not add to the emissions. It is strictly part of keeping equipment in working order in order for a facility to comply with CAA requirements. Thus, we do not believe that the revisions to section 33.1–15–20–4.4 will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

In addition to the sections revised by North Dakota indicating no interference with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA, all counties in North Dakota are designated as attainment for all criteria pollutants under the CAA. The rule revision is administrative in that it addresses permitting for potential new sources in the future. The rule revision itself does not approve any increases in actual emissions, and thus there are no specific increases in emissions to be addressed for interstate transport. Moreover, this rule does not affect the already existing legally and practicably enforceable requirements that facilities are already routinely achieving through the installation and operation of control equipment for health, safety and market purposes. This rule also does not exempt these facilities from other potentially applicable regulatory or permitting requirements. Because of these factors, EPA expects the revisions to North Dakota's chapter 33.1–15–20 will not interfere with any applicable CAA requirement, including attainment.

Comment: EPA's proposed approval of North Dakota's revisions to chapter 33.1–15–20 do not comply with 40 CFR 51.160(f). 40 CFR 51.160(f) requires that a state SIP must discuss the air quality data and the dispersion or other air quality modeling used to review new sources and modification pursuant to the requirements in 40 CFR 51.160–51.166. 40 CFR 51.160(f) applies to all sources covered by the NSR program, including the oil and gas wells/facilities subject to the revisions to North Dakota's registration rule. Contrary to EPA's regulation, the State's registration rule SIP amendments did not discuss what air quality data and dispersion or other modeling data the State used and relied on in developing the revisions. We included Tier 3 NO_2 modeling at the SandRidge Exploration and Production LLC's Bighorn Pad facility showed concentrations over six times the one-hour NO_2 NAAQS. Furthermore, the registration rule does not contain any provisions for the State to consider air quality data and the dispersion or other air quality modeling information in implementing the registration rule.

Response: We do not agree with the commenter that we are not meeting the requirements of 40 CFR 51.160(f) for air data and the dispersion or other air quality modeling used to review new sources and modification pursuant to the requirements in 40 CFR 51.160–51.166. 40. 40 CFR 51.160–51.166 addresses the requirements for review of new sources and modifications. Specifically, 40 CFR 51.160 provides that a state must submit a plan that contains legally enforceable procedures to enable the state to determine whether the construction or modification of a facility will result interference with attainment or maintenance of a national standard. In addition, 40 CFR 51.160 provides that the state must have procedures for the submission of the owner or operator of the facility to be constructed or modified including the requirement (found in 40 CFR 51.160(f)), as commenter stated, that the state SIP must discuss the type of air quality data and modeling required in the state permit application procedures for construction or modification of a source.

North Dakota's plan for the review of new sources and modifications is found in chapter 33.1–15–14. Specifically, North Dakota's section 33.1–15–14–02 spells out the State's requirements for permit to construct and alterations to sources. Section 33.1–15–14–02 was approved in a prior action by EPA.[8] In this rulemaking, we are finalizing approval of North Dakota's proposed revision to section 33.1–15–14–02.4a in which North Dakota incorporated by reference the PSD modeling guidance requirements found in 40 CFR part 51, appendix W (Guideline on Air Quality Models). This aligns with the requirements set out in 40 CFR 51.160(f)(1) of the air quality modeling requirement for new sources and modifications. In addition, the existing section 33.1–15–14–02.4b aligns with 40 CFR 51.160(f)(2). Thus, the requirements of 40 CFR 51.160(f) are being met by North Dakota's section 33.1–15–14–02.

The commenter confuses the requirement of 40 CFR 51.160(f) to require each SIP revision to contain air quality data and modeling when in fact 40 CFR 51.160(f) requires a state to have procedures in place discussing the type of air quality data and modeling required in the state permit application procedures for construction or modification of a source which North Dakota does in section 33.1–15–14.

Comment: There is no demonstration that the revisions to North Dakota's chapter 33.1–15–20 are protective of the PSD increments. Under 40 CFR 51.166(a)(1), a state's SIP must contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality. If a SIP revision would result in increased air quality deterioration over any baseline concentration, the plan revision should include a demonstration that it will not cause or contribute to a violation of the applicable increments. The State's SIP submittal expands the pollutants to include SO_2, NO_2, and PM, however, there is no demonstration of the effectiveness of the controls. Lacking these details and the required elements for enforceability, it is reasonable to assume that emissions from the oil and gas wells/facilities that are registered under the rule will increase air quality deterioration over the baseline concentration. Therefore, the SIP revision is required to include a demonstration that it will not cause or contribute to a violation of the applicable increments. The State's SIP submittal did not include this.

Response: We do not agree with the commenter that it is reasonable to assume the four revisions to North Dakota's chapter 33.1–15–20 will increase air quality deterioration over the baseline concentration. We discuss in detail in our response to the 110(l) demonstration comment that we do not

[8] See 85 FR 38079 (Jun. 25, 2020).

expect that the revisions to chapter 33.1–15–20 will result in an increase in emissions and thus does not trigger a demonstration that revisions will not cause or contribute to a violation of the applicable increment as spelled out in 40 CFR 51.166(a)(2).[9] Thus, we do not need to demonstrate the effectiveness of controls for the revisions to section 33.1–15–20–4.2, section 33.1–15–20–4.3, and section 33.1–15–20–4.4.

The commenter also points to the perceived lack of enforceability of chapter 33.1–15–20. In our previous response to an enforceability comment, we pointed to chapter 33–15–01–17 which provides the enforcement provisions for Article 33.1–15 including chapter 33.1–15–20. Chapter 33–15–01–17 are not impacted by North Dakota's revisions to chapter 33.1–15–20. The enforcement of those revisions remains under section 33.1–15–01–17.

Comment: North Dakota's proposed revisions are not practically enforceable. The requirements for enforceability of a minor NSR program is found at 40 CFR 51.160 which requires that state SIPs include the authority to prevent the construction of a facility or modification that will cause a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. The expanded coverage of the registration rule provisions, which are integrated into the registration rule and rely on self-registration by owners/operator, lack authority for the State to prevent construction or modification. North Dakota's SIP amendments lack a technically accurate limitation and also lacks a time period for the limitation. There are no methods specified in the SIP amendments for the owners and operators to determine compliance and no requirement to keep records. The rule does not specify any consequences for enforcement. In addition, the SIP revisions and SIP submittal lacks provisions that demonstrate how the state complies with these requirements. The SIP amendments leave it entirely up to the owner/operator of the oil and gas well/facility to decide whether, when and how to conduct an inspection. The amendments lack clarity on how swiftly maintenance must be performed, whether the root cause of maintenance must be determined and identification and implementation of measures to reduce maintenance. Furthermore, the inspections/maintenance work practice requirement is only conducted to minimize emissions. Given the nature of fugitive emissions from oil and gas operations, the rule should require more than just minimizing emissions. There should be ongoing requirements for inspection and repair. Additionally, there are no requirements that the owners/operators make records of the testing, inspections, and retain them. This is contrary to the requirements in 40 CFR 51.211 which requires legally enforceable procedures for requiring owners or operators of stationary source to maintain records and periodically report to the State. The rule revisions lack information on the nature and amount of emissions from the stationary sources as well as other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy. The rule revisions lack provisions for calculating compliance on a 12-month rolling average and against the applicable short-term NAAQS limits. The public has no means to know what is going on regarding implementation of this rule and thus is barred from use of the CAA's citizen suits provisions. The revisions to the rule also lack provisions for the State to request additional information about the operations. The revisions to the rule also lack provisions that provide that oil and gas wells/facilities with emissions that exceed the major source emissions threshold constitute violations of permitting and SIP requirements. Lacking all these provisions means there is no way to determine compliance and ensure that the NAAQS and other requirements of the CAA are protected.

Response: The commenter confuses the chapter 33–15–20 revisions (oil and gas registration requirements) with other provisions of the NSR program. Chapter 33–15–20 is silent as to compliance, recordkeeping, and enforcement since the provisions that address all facilities including oil and gas facilities is found in North Dakota's federally approved NSR program. As stated previously, North Dakota's overall NSR program including compliance is codified in Chapters 33–15–14 and 33–15–15 and are modeled after the federal NSR program found in 40 CFR 51.160–51.166. Recordkeeping is codified in North Dakota's chapter 33.1–15–20.02. Enforcement requirements that the revisions are subject to are codified in 33–15–01–17. Compliance, recordkeeping, and enforcement requirements that are applicable to section 33.1–15–20 are not being proposed for revision.[10] Therefore, these comments on compliance, recordkeeping, and enforcement are outside the scope of the revisions we are acting on in this rulemaking.

Comment: North Dakota's revisions to chapter 33.1–15–20 allow minor sources to avoid the requirements of 40 CFR 51.160(d). 40 CFR 51.160(d) requires a SIP to include procedures that if an owner or operator receives approval to construct or modify a source, the owner or operator must still comply with applicable portions of the control strategy. The revisions to the chapter 33.1–15–20 lack language that requires that an owner or operator to comply with the applicable portions of the existing SIP control strategies.

Response: We do not agree with commenter that the revisions to chapter 33.1–15–20 allow minor sources to avoid the requirements of 40 CFR 51.160(d). 40 CFR 51.160(d) requires the state program for review of new sources and modifications include procedures that approval of any construction or modification must not affect the responsibility to the owner or operator with the applicable portions of the control strategy. North Dakota adopted the provisions of 40 CFR 51.160(d) within NDAC section 33.1–15–14–02.10.a. Section 33.1–15–14–02.10.a states that ''the issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.'' We approved chapter 33.1–15–14–02 on June 25, 2020.[11] Chapter 33.1–15–20 does not contain provisions of 40 CFR 51.160(d) either before or after North Dakota's revisions to this chapter since it is provided in chapter 33.1–15–14–02 and chapter 33.1–15–14–02 is applicable to all facilities including oil and gas facilities.

Comment: The SIP revisions do not comply with the regional haze requirements. EPA's regional haze

[9] Commenter cites 40 CFR 51.166(a)(1) which addresses the original submitted PSD SIP requirements. 40 CFR 51.166(a)(2) addresses requirements for revisions to a PSD SIP.

[10] While we proposed approval of four revisions to chapter 33.1–15–15 in this rulemaking, the revisions did not modify and compliance requirements. The proposed revisions: (1) Updated the incorporation by reference of federal PSD requirements; (2) expanded administrator to include ''or the administrator's authorized representative;''(3) added the requirement that when the state goes out to comment under this chapter that the state must also provide notice on the department's website; and (4) adds language that draft permit to construct are also required to be published during the public comment period for a permit. The proposed changes to chapter 33.1–15–15 did not receive comment. In addition, we proposed no changes to chapter 33–15–14. See our proposal for a more detailed explanation of the North Dakota revisions that were proposed for approval, and we are now finalizing approval at 86 FR 41413 (Aug. 2, 2021).

[11] See 85 FR 38079.

program requires states to design and implement programs to curb haze-causing emissions within their state. Emissions from the oil and gas wells and associated equipment impact visibility. The CAA does not provide an off-ramp from the reasonable progress four-factor analysis for sources that would rely on the proposed amendments to North Dakota's registration program. EPA's proposed action to approve the changes to North Dakota registration regulations did not take into consideration all requirements of the CAA, including the long-term strategy for regional haze. EPA must not make decisions in isolation, set aside distinct requirements or delay their implementation. North Dakota's proposed SIP amendments should not be approved by EPA as they would replace the State's responsibility under the CAA to conduct the required reasonable progress four factor analysis for the oil and gas sources.

Response: This comment addresses provisions that were not affected by the revisions approved in this action and is beyond the scope of this rulemaking. This rulemaking does not address revisions to North Dakota's regional haze requirements. Our proposed rulemaking explicitly stated that the regional haze requirements had been addressed in a prior rulemaking. In that prior rulemaking, the EPA approved North Dakota's rule revisions to chapter 33.1–15–25 (regional haze) on June 8, 2021 (86 FR 30387). The commenter does not demonstrate that the changes approved in this action will allow oil and gas sources to increase emissions to a degree that influences the effectiveness of North Dakota's regional haze regulations.

Comment: North Dakota's submittal lacked information required for EPA to process the SIP. Specifically, North Dakota's SIP submittal lacked the following technical support required by appendix V of 40 CFR part 51: (1) identification of all regulated pollutants affected by the revisions; (2) identification of the locations of affected sources including the EPA attainment/nonattainment designations of the locations and the status of the attainment plan for the affected areas; (3) quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources; (4) state's demonstration that the NAAQS, PSD increments, and visibility, are protected if the plan revisions are approved and implemented; (5) modeling information to support the proposed revision; (6) evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels; and (7) compliance/enforcement strategies, including how compliance will be determined in practice. With the missing required technical support, it was inappropriate for EPA to proceed with evaluating an incomplete SIP submission and propose approval.

Response: We disagree with the comment that the submittal lacked information required for EPA to process the SIP under appendix V of 40 CFR part 51. As explained in our prior responses, the revisions consist of those that are administrative in nature as well as revisions that do not lead to an increase in emissions. Thus, the additional technical documentation related to an increase in emissions that the commenter is seeking is not required.

CAA section 110(k) provides a two-step process for EPA's review of SIP submittals. First, within six months of receiving a SIP submission, EPA must make a threshold ''completeness determination'' to determine whether the SIP contains certain ''minimum criteria'' designated by EPA as ''the information necessary to . . . determine whether the plan submission complies with the provisions of the CAA.'' [12] These minimum criteria are listed in 40 CFR part 51, appendix V.[13] There is no requirement in the CAA or EPA's regulations that EPA document its completeness review prior to proposing to approve a SIP revision. To the contrary, if EPA fails to make the completeness determination within six months, the SIP submission is deemed complete by operation of law.[14] Here, EPA received North Dakota's SIP submittal on July 28, 2020. EPA did not make a formal completeness determination within six months; thus, the SIP submittal was deemed complete by operation of law and constitutes an official submission.[15] North Dakota's authority to adopt the SIP is addressed in the Opinion issued by the North Dakota Office of Attorney General and submitted with the SIP revision.[16]

In the second step of the two-step process, EPA evaluates SIP submittals for compliance with substantive requirements.[17] Here, the relevant provisions [18] are section 33.1–15–20–4.2 (which expanded the definition of flare stack height to air contaminants when it was previously limited to hydrogen sulfide), section 33.1–15–20–4.3 (which edited the provision to match language in chapter 33.1–15–07 which the section refers to by removing the term ''volatile'' from the term ''organic compound gas(es) and vapor(s)), section 33.1–15–20–4.3 pluralized the terms ''vapor'' and ''gas'' to reference both volatile and non-volatile gases, and section 33.1–15–20–4.4 (which expanded inspections and routine maintenance to minimize all emissions from oil and gas equipment). EPA explained in the proposed rule and in our responses above how North Dakota's SIP revision complies with these substantive requirements of the CAA including how the enforceability of the chapter 33.1–15–20 has not been impacted much less weakened by North Dakota's four revisions to chapter 33.1–15–20. Thus, the commenters' assertions that North Dakota's SIP revision to chapter 33.1–15–20 was inadequate because it lacked appendix V criteria and that EPA's proposal was inadequate because it lacked an appendix V completeness determination are without merit.

Comment: Executive Order 12898 requires federal agencies to achieve environmental justice through identification and addressing disproportionate high and adverse human health or environmental effects of its programs. Executive Order 14008 addresses climate change while implementing environmental justice. Contrary to the requirements of Executive Order 12898 and 14008, EPA's proposal fails to integrate the Executive Orders 12898 and 14008. EPA must not approve SIP amendments that lack clarity and enforceability, fail to meet the requirements of the CAA and EPA's regulations, and relax protections for the impacted environmental justice communities.

[12] 42 U.S.C. 7410(k)(1)(A), (B).

[13] 40 CFR part 51, appendix V.

[14] 42 U.S.C. 7410(k)(1)(C); 40 CFR part 51, appendix V, § 1.2.

[15] 40 CFR part 51, appendix V, § 1.2 (''A determination of completeness under this paragraph means that the submission is an official submission for purposes of § 51.103.'')

[16] Letter dated July 28, 2020, from Doug Burgum, Governor, North Dakota, to Gregory Sopkin, Regional Administrator, EPA Region 8, Subject: Revisions to North Dakota Regional Haze SIP for control of air pollution; North Dakota, Final Revisions to Implementation Plan for Control of Air Pollution, Amendment No. 2 to North Dakota State Implementation Plan First Planning Period for Regional Haze (July 2020) (Amendment No. 2) at 121.

[17] See *NRDC* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995).

[18] We drew adverse comments on chapter 33.1–15–20. Control of Emissions from oil and gas well production facilities and are limiting are response to that provision. We did review all the submitted rule revisions by North Dakota and found that they meet the requirements of CAA 110(k). Since we did not receive adverse comments on these other revisions, we are not speaking in detail about these other revisions in our responses.

Response: This action is finalizing approval of North Dakota's revisions to the State's Air Pollution Control regulations. In particular, we drew comments on the approvability of revisions to chapter 33.1–15–20 in which North Dakota proposed four revisions. As explained in more detail in the previous responses, two of the revisions expanded the coverage of what is regulated under chapter 33.1–15–20 [19] and two revisions were administrative in nature.[20] Our previous responses also address how the clarity and enforceability of the regulations have not been impacted by the revisions and how North Dakota's revisions to chapter 33.1–15–20 meet the requirements of the CAA. We do not agree that the revisions which expand coverage to all air contaminants for flare stack height, routine inspection and maintenance of oil and gas facility equipment, as well as revisions the clarify language to align with its referring chapter relax protections for impacted environmental justice communities. In fact, we believe it will have the opposite effect. Executive Order 12898 and Executive Order 14008 does direct the agency to identify and address environmental justice and the disproportionate impacts on impacted communities in federal actions. However, the rule being approved in this action does not weaken any part of the existing oil and gas registration program and therefore is not expected to adversely impact communities with environmental justice concerns.

III. Final Action

As outlined in our proposed rulemaking, the EPA is taking final action to approve the addition of new and revised rules to Article 33.1–15 (Air Pollution Control), as submitted on August 3, 2020.

Specifically, we are taking final action to approve the following revisions: Revisions to Chapter 33.1–15–01 (General Provisions)—section 33.1–15–01–01; section 33.1–15–01–01–04; section 33.1–15–01–01–05 Revisions to Chapter 33.1–15–02 (Ambient Air Quality Standards)—, Table 1; Revisions to Chapter 33.1–15–03 (Restriction of Emission of Visible Air Contaminants); Revisions to Chapter 33.1–15–14 (Designation of Air Contaminant Sources; Permit to Construct, Title V Permit to Operate)—section 33.1–15–14–1.1; section 33.1–15–14–02; Revisions to Chapter 33.1–15–15 (Prevention of Significant Deterioration of Air Quality)—section 33.1–15–15–1.2; Revisions to Chapter 33.1–15–19 (Visibility Protection)—section 33.1–15–19–1.1; section 33.1–15–19–1.2; Revisions to Chapter 33.1–15–20 (Control of Emissions from Oil and Gas Well Production Facilities)—section 33.1–15–20–4.2; section 33.1–15–20–4.3; section 33.1–15–20–4.4; Revisions to Section 2.15 (Respecting Boards).

In addition to taking final action approving North Dakota's revisions, we are also correcting an error in citation we made in our proposal for the revision to section 33.1–15–10–04.4. In FR document 86 FR 41413, appearing on page 41415 in section G, subchapter 2, second asterisk, section 33.1–15–20–04.3 should read section 33.1–15–20–04.4.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain amendments to the NDAC, as listed in section III. Final Action of this preamble, which regulate the State's Ambient Air Quality Standards, Permit to Construct, and PSD. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[21]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP 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. The rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

[19] Section 33.1–15–20–4.2 expanded the definition of flare stack height to air contaminants when it was previously limited to hydrogen sulfide. Section 33.1–15–20–4.4 expanded routine inspections and maintenance of oil and gas equipment to include minimization of all air contaminants at a production facility and not just hydrogen sulfide.

[20] Section 33.1–15–20–4.3 removed the term ''volatile'' from the term ''organic compound vapor and gas(es)'' so that it aligned with the referring terms in chapter 33.1–15–07. Section 33.1–15–20–4.3 also pluralized the terms ''vapor'' and ''gas'' to reference both volatile and non-volatile gases.

[21] 62 FR 27968 (May 22, 1997).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 28, 2023.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble words of issuance 40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart JJ—North Dakota

■ 2. In § 52.1820:

■ a. In the table in paragraph (c), revise the entries ''33.1–15–01–01'', ''33.1–15–01–04'', ''33.1–15–01–05'', ''Table 1'', ''33.1–15–14–01.1'', ''33.1–15–14–02'', ''33.1–15–15–01.2'', ''33.1–15–19–01'', and ''33.1–15–20–04''.

■ b. In the table in paragraph (e), revise the entry ''Section 2.15''.

The revisions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	* *	*	*	*	*
33.1–15–01–01	Purpose	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
33.1–15–01–04	Definitions	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
33.1–15–01–05	Abbreviations	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
Table 1	Ambient Air Quality Standards.	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
33.1–15–14–01.1	Definitions	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
33.1–15–14–02	Permit to Construct	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
33.1–15–15–01.2	Scope	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
33.1–15–19–01	General Provisions	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*
33.1–15–20–04	Requirements for control of production facility emissions.	7/1/2020	4/6/2023	[insert **Federal Register** citation], 3/7/2023.	
*	* *	*	*	*	*

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(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	* * *	*	*	*	*
	Chapter 2. Legal Authority				
*	* * *	*	*	*	*
Section 2.15	Respecting Boards	7/1/2020	4/6/2023	[Insert **Federal Register** citation], 3/7/2023.	
*	* * *	*	*	*	*

[FR Doc. 2023–04427 Filed 3–6–23; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–73

[FMR Case 2021–102–1; Docket No. GSA–FMR–2021–0020; Sequence No. 1]

RIN 3090–AK42

Federal Management Regulation; Real Estate Acquisition

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is finalizing an amendment to the Federal Management Regulation (FMR) part regarding real property acquisition to clarify the policies for entering into lease agreements for high-security space in accordance with the Secure Federal Leases from Espionage And Suspicious Entanglements Act, also referred to as the Secure Federal LEASEs Act.

DATES: *Effective:* April 6, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–208–2956 or *chris.coneeney@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov*. Please cite FMR Case 2021–102–1.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule at 86 FR 71604 on December 17, 2021, to implement section [4] of the Secure Federal Leases from Espionage And Suspicious Entanglements Act, also referred to as the Secure Federal LEASEs Act, Public Law 116–276, 134 Stat. 3362 (2020) (the ''Act''), which requires the disclosure of ownership information to Federal lessees leasing high-security space to enable the lessee to mitigate potential national security risks. The Act was signed into law on December 31, 2020 (available at *https://www.congress.gov/116/plaws/publ276/PLAW-116publ276.pdf*). The Act imposes disclosure requirements regarding the foreign ownership and control, particularly ''immediate owner,'' ''highest level owner'' and ''beneficial ownership,'' of prospective lessors of ''high-security leased space'' (*i.e.,* property leased to the Federal Government having a security level of III or higher). GSA implemented section 3 and section 5 of the Act through the interim rule General Services Administration Acquisition Regulation (GSAR) Case 2021–G527 (86 FR 34966) (available at *https://www.federalregister.gov/documents/2021/07/01/2021-14161/general-services-administration-acquisition-regulation-immediate-and-highest-level-owner-for*).

The requirements of the statute are applicable to Federal lessees, defined by the Act as leases by the U.S. General Services Administration (GSA), the Architect of the Capitol, ''or the head of any Federal agency, other than the Department of Defense, that has independent statutory leasing authority.'' The Act is not applicable to the Department of Defense (DOD) or to the intelligence community. Section 2876 of the FY 2018 National Defense Authorization Act (Pub. L. 115–91) already provides DOD similar authority to obtain ownership information with respect to its high-security leased space.

The Act addresses national security risks identified in the U.S. Government Accountability Office (GAO) report, ''GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners,'' dated January 2017 (GAO–17–195) (available at *https://www.gao.gov/assets/gao-17-195.pdf*). This report found certain high-security Federal agencies were in buildings owned or controlled by foreign entities. According to the report, most Federal tenants were unaware the spaces GAO identified were subject to foreign ownership or control, exposing these agencies to the heightened risk of surreptitious physical or cyber espionage by foreign actors. The report also noted GAO could not identify the owners of approximately one-third of the Federal Government's high-security leases because such ownership information was unavailable for those buildings.

This final rule addresses the following specific requirements in Section 4 of the Act:

- Identification of beneficial ownership information.
- Development of a governmentwide plan for identifying all immediate, highest-level, and beneficial owners of high-security leased space.
- Submission of a corresponding report to Congress.

This final rule addresses the annual submission of ownership disclosures to GSA from agencies operating under either independent statutory leasing authority or a grant of delegated leasing authority from GSA.

What is a ''Beneficial Owner''?

Unlike the direct control–based immediate owner and highest-level owner, the Act defines the term ''beneficial owner'' to include any person that, through a contract, arrangement, understanding, relationship, or otherwise, exercises control over the covered entity or has a substantial interest in or receives substantial economic benefits from the assets of the covered entity, with some exceptions.

The Act is one of several recent examples of congressional concern about foreign ownership and control and congressional action in the world of government contracting to help address potential national security concerns. See, *e.g.,* FY 2021 National Defense Authorization Act (NDAA) (Pub. L. 116–283), § 819, Modifications to Mitigating