



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2013-0274; FRL-9825-1]

Approval and Promulgation of Implementation Plans;  
New York; Infrastructure SIP for the 1997 8-Hour Ozone and  
the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

EFFECTIVE DATE: This rule is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2013-0274. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:**

Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249, or by e-mail at [wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

Under CAA section 110(a)(1), states are required to submit plans called state implementation

plans (SIPs) that provide for the implementation, maintenance and enforcement of each NAAQS and are referred to as infrastructure SIPs. 42 U.S.C. 7410(a)(1). On July 18, 1997, EPA promulgated new and revised NAAQS for 8-hour ozone (62 FR 38856) and PM<sub>2.5</sub> (62 FR 38652). EPA strengthened the 24-hour PM<sub>2.5</sub> NAAQS on October 17, 2006 (71 FR 61144). The 14 elements required to be addressed in infrastructure SIPs are as follows: (1) emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees; and (14) consultation/participation by affected local entities.

EPA is acting on three New York SIP submittals, dated December 13, 2007, October 2, 2008 and March 15, 2010, which address the section 110 infrastructure requirements for the three NAAQS: the 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. This action does not address the requirements of section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS, since they were addressed in previous rulemakings. See January 24, 2008 (73 FR 4109). Additionally, this action does not address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS, which also was addressed in a previous EPA rulemaking. See July 20, 2011 (76 FR 43153). Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section

110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46352, 46354 (August 3, 2012) (footnote 3); 77 FR 60307, 60308 (October 3, 2012) (footnote 1). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the above infrastructure elements related to section 110(a)(2)(C) or 110(a)(2)(I).

EPA proposed action on the three SIP revisions on April 30, 2013 (78 FR 25236) and no comments were received on the proposal. The reader is referred to the April 30, 2013 proposed rulemaking for a detailed discussion of New York's submittals and EPA's review and proposed actions.

In a letter dated May 23, 2013, New York made a supplemental submittal that addresses the following 110(a)(2) sub-elements: E(ii) (conflict of interest provisions) and E(iii) (delegations).

## **II. What action is EPA taking?**

EPA is approving New York's submittals as fully meeting the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS for the following section 110(a)(2)

elements and sub-elements: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E)(i), (F), (G), (H), (J), (K), (L), and (M). With this approval action, EPA's action on October 22, 2008 (73 FR 62902) for New York has been satisfied.

New York made a supplemental submittal on May 23, 2013 which corrects the deficiencies, relevant to sub-elements E(ii) and E(iii), that were identified in the April 30, 2013 proposed rulemaking action. New York's supplemental submittal includes: New York Public Officer's Law (POL) section 73-a, "Financial disclosure;" Title 19 of the New York Codes of Rules and Regulations (19 NYCRR) Part 937, "Access To Publicly Available Records;" a list identifying entities that received delegated responsibilities for implementing and enforcing portions of the New York SIP; and, a copy of the "delegation order." On April 30, 2013, EPA proposed to conditionally approve New York's infrastructure SIP in fulfilling the requirements of section 110(a)(2)(E)(ii) and E(iii) for 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, provided the State committed to submit: POL section 73-a and 19 NYCRR Part 937 for approval as part of the SIP; a list of the county or local governments or entities that have been delegated responsibilities to implement or enforce portions of the SIP; and, copies of the delegation orders or memoranda of understanding between the State and the county or local governments or entities. However, EPA also proposed in the April 30, 2013 action, that in the alternative, should New York submit the required information before we take final rulemaking action, EPA will fully approve section 110(a)(2)(E)(ii) and E(iii). Therefore, since New York submitted the required information, EPA is approving New York's submittals for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub>

NAAQS for the following 110(a)(2) sub-elements: E(ii) (state boards and conflict of interest provisions) and E(iii) (delegations). EPA is also approving POL section 73-a (2)(a)(i) and (ii) and 19 NYCRR Subpart 937.1(a) into the New York SIP for the limited purpose of satisfying Clean Air Act Section 128(a)(2).

### **III. Statutory and Executive Order Reviews**

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 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
- does not provide 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 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: June 5, 2013.                      Judith A. Enck,  
Regional Administrator,  
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended 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 HH - New York

2. Section 52.1670 is amended by:

- a. Adding a new heading for Title 19 and a new entry for “Part 937, Access to Publicly Available Records” to the table in paragraph (c) before the heading for “Environmental Conservation Law;”
- b. Adding a new heading for “Public Officers Law” and a new entry for “Section 73-a, Financial Disclosure” to the table in paragraph (c) after the entry for “Section 19-0325;” and,
- c. Adding a new entry at the end of the table in paragraph (e).

The additions read as follows:

§52.1670 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA - APPROVED NEW YORK STATE REGULATIONS AND LAWS

| New York State regulation                        | State effective date | Latest EPA approval date                          | Comments                                                                                                                                          |
|--------------------------------------------------|----------------------|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| * * * * *                                        |                      |                                                   |                                                                                                                                                   |
| Title 19                                         |                      |                                                   |                                                                                                                                                   |
| Part 937, "Access To Publicly Available Records" | 8/27/12              | [Insert date of publication and FR page citation] | Only subpart 937.1(a) is approved into the SIP and is for the limited purpose of satisfying Clean Air Act Section 128(a)(2).                      |
| * * * * *                                        |                      |                                                   |                                                                                                                                                   |
| Public Officers Law                              |                      |                                                   |                                                                                                                                                   |
| Section 73-a, "Financial disclosure"             | 8/15/11              | [Insert date of publication and FR page citation] | Only subsections 73-a (2)(a)(i) and (ii) are approved into the SIP and are for the limited purpose of satisfying Clean Air Act Section 128(a)(2). |

\* \* \* \* \*

(e) \* \* \*

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Action/SIP element                                                                                        | Applicable geographic or nonattainment area | New York submittal date                                 | EPA approval date                                                                                      | Explanation                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------|---------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| * * * * *                                                                                                 |                                             |                                                         |                                                                                                        |                                                                                                                                                           |
| Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour ozone and the 1997 and 2006 PM2.5 NAAQS | Statewide                                   | 12/13/07, 10/2/08, 3/15/10 and supplemented on 5/23/13. | [Insert date of publication in the Federal Register]<br>[Insert page number where the document begins] | This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). |

[FR Doc. 2013-14626 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]