



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R02-OAR-2016-0478, FRL-9957-08-Region 2]**

**Approval and Promulgation of Implementation Plans;  
New York Prevention of Significant Deterioration of  
Air Quality and Nonattainment New Source Review; Infrastructure State Implementation  
Plan Requirements**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the New York State Implementation Plan (SIP) amending existing nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration of Air Quality, PSD) program requirements that the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA on October 12, 2011. Specifically, the SIP revision includes new requirements pertaining to the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometer (PM<sub>2.5</sub>) and the regulation of Greenhouse Gases (GHGs) under New York's Part 231, "New Source Review for New and Modified Facilities;" Part 201, "Permits and Registrations;" and amendments to Part 200, "General Provisions," of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). The SIP revision will make the SIP consistent with existing federal requirements. The EPA is also taking final action to approve certain elements of New York 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 2008 lead (Pb), 2008 ozone, and 2010 sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS).

**DATES:** This rule is effective on [**Insert date 30 days after date of publication in the Federal Register**].

**ADDRESSES:** EPA has established a docket for this action under Docket ID number **EPA-R02-OAR-2016-0478**. All documents in the docket are listed on the <http://www.regulations.gov> website.

**FOR FURTHER INFORMATION, CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

Throughout this document, references to “EPA,” “we,” “us,” or “our,” are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What Is the Background for This Action?
- II. What Sections of New York’s Rules Are We Approving in This Action?
- III. What Are EPA’s Responses to Comments to EPA’s Proposal?
- IV. What Action Is EPA Taking?
- V. Incorporation By Reference.

## VI. Statutory and Executive Order Reviews.

### **I. What Is the Background for This Action?**

On October 12, 2011, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA Region 2 a new set of revisions to the New York State Implementation Plan (SIP). This submittal consists of revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. New York undertook this rulemaking to comply with EPA's May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>). Also, the revisions implement EPA's October 20, 2010 final rule that establishes the PM<sub>2.5</sub> increments, significant impact levels, and significant monitoring concentrations. New York's rulemaking implements PM<sub>2.5</sub> provisions that were not previously included in the November 17, 2010 EPA SIP approval of Part 231. This SIP revision also incorporates provisions that conform to EPA's June 3, 2010 final rule for Greenhouse Gases (GHGs) under its PSD and Title V programs, establishing major source applicability threshold levels for GHG emissions and other conforming changes such as the establishment of global warming potential values for calculating CO<sub>2</sub> equivalents under New York's PSD and Title V programs. In today's action, the EPA is taking final action to approve those revisions by issuing a full approval, as proposed (see 81 FR 63448 (September 15, 2016)).

The EPA is also taking action to approve certain elements of New York SIP revisions as meeting

CAA section 110(a) requirements for the 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS.

NYSDEC submitted a SIP for the 2008 Pb NAAQS on October 13, 2011, as supplemented on February 24, 2012, and for the 2008 ozone NAAQS on April 4, 2013 and the 2010 SO<sub>2</sub> NAAQS on October 3, 2013.

Under CAA sections 110(a)(1) and (2), states are required to submit SIPs that provide for the implementation, maintenance and enforcement of the NAAQS. The EPA refers to these types of SIP submissions as the “infrastructure” SIPs. States must make infrastructure SIP submissions within 3 years after the promulgation of a new or revised NAAQS. On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for Pb, which is 0.15 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) maximum not to be exceeded on a rolling 3-month average. On March 27, 2008 (73 FR 16436), EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO<sub>2</sub> at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

This final action pertains only to the portions of the infrastructure SIPs submitted for the 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQs pertaining to CAA sections 110(a)(2)(C); 110(a)(2)(D)(i)(II) prong 3 (PSD); and 110(a)(2)(J). The reader is referred to the September 15, 2016 proposed rulemaking for a detailed discussion of New York’s submittals and EPA’s review and proposed actions.

## **II. What Sections of New York's Rules Are We Approving in This Action?**

With respect to 6 NYCRR Part 200, the EPA is taking final action to approve into the New York SIP revisions to Section 200.1, specifically, subparts 200.1(bj), 200.1(bl), 200.1(cj), 200.1(cu) through 200.1(cv), together with revisions to Section 200.9, Table 1, as delineated in the New York October 12, 2011 submittal to EPA.

With respect to 6 NYCRR Part 201, the EPA is taking final action to approve into the New York SIP revisions to subpart 201-2.1(b)(21) with the exception of changes to the definitions in subparts 201-2.1(b)(21)(i) and 201-2.1(b)(21)(v) which were withdrawn by the NYSDEC.

With respect to 6 NYCRR Part 231, the EPA is taking final action to approve all of Part 231 into the New York SIP except certain revisions to Part 231 which were withdrawn by the NYSDEC. The withdrawn revisions which are not being approved into the New York SIP are, as identified in EPA's September 15, 2016 proposal, certain portions of subpart 231-5.5(b)(3) and 231-6.6(b)(3), 231-10.1(d), 231-12.7 containing the Significant Impact Levels (SILs) for PM<sub>2.5</sub>, Section 231-13.5 Table 5 containing the GHG major source thresholds for sources that are major for GHG only and subpart 231-12.4(a)(1) containing the PM<sub>2.5</sub> Significant Monitoring Concentration (SMC) of 4 ug/m<sup>3</sup>. However, EPA approves New York's replacement of the SMC value with zero (0) until future regulatory changes are made.

## **III. What Are EPA's Responses to Comments to EPA's Proposal?**

In response to EPA's September 15, 2016 (81 FR 63448) proposed approval, the EPA received

no comments during the public comment period.

#### **IV. What Action Is EPA Taking?**

The EPA is taking a final action to approve revisions of 6 NYCRR Parts 200, 201, and 231 to the New York State Implementation Plan (SIP) as specified in Section II of this notice and submitted by the New York State Department of Environmental Conservation (NYSDEC) on October 12, 2011, with the exception of the NYSDEC withdrawn items listed in Section II of this notice.

EPA is also taking final action to approve New York's infrastructure SIP submittals for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> for CAA Section 110(a)(2) elements and sub-elements, as follows:

110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J).

#### **V. Incorporation By Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revised versions of 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 described in the proposed amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by 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 EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP

compilation<sup>1</sup>. EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **VI. 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 CAA 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.*);

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<sup>1</sup> 62 FR 27968 (May 22, 1997)

- 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, 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. Thus Executive Order 13175 does not apply to this action.

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 **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

November 22, 2016.

Dated:

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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. In § 52.1670:

a. The table in paragraph (c) is amended by revising four entries for “Title 6, Part 200, Subpart 200.1”, “Title 6, Part 200, Subpart 200.9”, “Title 6, Part 201, Subpart 201-2.1(b)(21)”, and “Title 6, Part 231”; and

b. The table in paragraph (e) is amended by:

i. Adding another entry titled “Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS” at the end of the table; and

ii. Adding two entries titled “Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS” and “Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS” at the end of the table.

The additions read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

## EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS.

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 200, Subpart 200.1	General Provisions, Definitions	10/15/11	<b>[Insert date of publication in the Federal Register]</b>	<p>The word odor is removed from the Subpart 200.1(d) definition of “air contaminant or air pollutant.”</p> <p>Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.</p> <p>Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.</p> <p>EPA is including the definition of “federally enforceable” with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to “avoid” applicable requirements.</p> <p>EPA is approving incorporation by reference of those documents that are not already federally enforceable.</p> <p>EPA approval finalized at <b>[Insert Federal Register]</b></p>

				<b>citation]</b>
* * * * *				
Title 6, Part 200, Subpart 200.9	General Provisions, Referenced Material	10/15/11	<b>[Insert date of publication in the Federal Register]</b>	EPA is approving reference documents that are not Federally enforceable.  EPA approval finalized at <b>[Insert Federal Register citation]</b>
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Title 6, Part 201, Subpart 201- 2.1(b)(21)	Permits and Registrations, Definitions	10/15/11	<b>[Insert date of publication in the Federal Register]</b>	EPA is including the definition of “Major stationary source or major source or major facility” with the understanding that the definition applies only to provisions of Part 231.  Revisions are approved except for changes to the definitions in 201-2.1(b)(21)(i) and 201-2.1(b)(21)(v) withdrawn by NYSDEC as per July 28, 2016 letter to EPA Region 2.  EPA approval finalized at <b>[Insert Federal Register citation]</b>
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Title 6, Part 231	New Source Review for New and Modified Facilities	10/15/11	<b>[Insert date of publication in the Federal Register]</b>	Full approval except for certain revisions to 231-5.5(b)(3), 231-6.6(b)(3), 231-10.1(d), 231-12.4(a)(1), 231-12.7, and 231-13.5 Table 5 withdrawn by NYSDEC as per July 28, 2016 NYSDEC letter to EPA Region 2.  The PM2.5 Significant Monitoring Concentration (SMC) is approved as 0 µg/m3 in 231-12.4(a)(1)  EPA approval finalized at

				<b>[Insert Federal Register citation]</b>
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**EPA-APPROVED NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

<b>Action/SIP element</b>	<b>Applicable geographic or nonattainment area</b>	<b>New York submittal date</b>	<b>EPA approval date</b>	<b>Explanation</b>
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS	Statewide	04/04/2013	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS	Statewide	10/13/11, and supplemented on 2/24/12	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Statewide	10/03/2013	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).