



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0459, FRL-9967-76-Region 2]

Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a State Implementation Plan (SIP) submitted by the State of New York for purposes of implementing Reasonably Available Control Technology (RACT) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed approval is conditioned on New York's timely submittal of a supplement to the SIP that includes a revised regulatory RACT requirement related to control of volatile organic compounds from Industrial Cleaning Solvents. The EPA is proposing to approve New York's RACT SIP as it applies to non-control technique guideline major sources and major sources of oxides of nitrogen. The EPA is also proposing to approve the State of New York's non-attainment new source review certification as sufficient for purposes of satisfying the 2008 8-hour ozone NAAQS. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2017-0459** at <http://www.regulations.gov>. Follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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I. What action is the EPA proposing?

The EPA is proposing to conditionally approve a State Implementation Plan (SIP) submitted by the State of New York on December 22, 2014 for purposes of implementing Reasonably Available Control Technology (RACT)¹ for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). The State's December 2014 SIP revision consists of a demonstration that New York meets the RACT requirements for the two precursors for ground-level ozone, i.e., oxides of nitrogen (NO_x) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 ozone standard.

However, in New York's December 2014 SIP submittal, the State indicates that the RACT requirements for the 2008 ozone NAAQS have been fulfilled with the exception of sources subject to the industrial cleaning solvents control techniques guidelines (CTG). In the State's submittal, New York committed to address sources subject to this CTG through a timely revision to Part 226 entitled, "Solvent Metal Cleaning Processes" of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR Part 226). Therefore, consistent with Section 110(k)(4) of the Clean Air Act, the EPA is conditioning its approval of New York's December 2014 SIP submittal on New York's commitment to submit, by a date certain but not later than one year after the date of the EPA's conditional approval of New York's December 2014 SIP submittal, a revised Part 226 addressing VOC emissions from industrial cleaning solvents. The State's

¹ The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

commitment must be submitted to EPA, as a supplement to the SIP, and include a date certain by which the State will submit Part 226, and the date certain must be no later than one year from the effective date of the EPA's final rule making action on New York's December 2014 SIP submittal. New York must commit in writing to correct the deficiency discussed above.

The EPA is proposing to approve New York's RACT SIP as it applies to non-CTG major sources of VOCs and to major sources of NO_x. The EPA is also proposing to approve New York's certification that nonattainment new source review (NNSR) applies statewide for NO_x and VOC emissions from stationary sources.

It should be noted that a court ordered consent decree² requires that the EPA shall sign a notice of final rulemaking on New York's December 2014 RACT SIP no later than November 30, 2017.

II. What is the background for this proposed rulemaking?

In 2008, EPA revised the health based NAAQS for ozone, setting it at 0.075 parts per million (ppm) averaged over an 8-hour time frame. The EPA determined that the revised 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

² Center for Biological Diversity v. Gina McCarthy, Case No. 4:16-cv-04092-PJH (N.D.Ca.), Revised Consent Decree dated 1/19/17.

On May 21, 2012 (77 FR 30087), the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour ozone standard. This action became effective on July 20, 2012. The two 8-hour ozone marginal nonattainment areas located in New York State are the New York-Northern New Jersey-Long Island (NY-NJ-CT) nonattainment area and the Jamestown nonattainment area. The remainder of New York State was designated as unclassifiable/attainment. The New York portion of the NY-NJ-CT nonattainment area, also referred to as the New York Metropolitan Area (NYMA), is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation.³ The Jamestown nonattainment area is composed of Chautauqua County. On May 4, 2016 (81 FR 26697), the EPA determined that Jamestown attained the 2008 ozone standard by the July 20, 2015 attainment date and that the NY-NJ-CT nonattainment area did not attain the 2008 ozone standard by the applicable attainment date and is reclassified from a marginal to a moderate nonattainment area. State attainment plans for moderate nonattainment areas were due by January 1, 2017. Jamestown is still classified as a marginal nonattainment area until the State submits a redesignation request⁴ to the EPA. Since the NYMA has been reclassified to a moderate nonattainment area, New York plans to submit a new RACT determination as part of the State's attainment demonstration for the 2008 ozone standard.

³ Information pertaining to areas of Indian country is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status, and makes no determination of Indian country boundaries at 77 FR 30087 (May 21, 2012).

⁴ EPA's determination of attainment does not constitute a redesignation to attainment. Redesignation requires states to meet a number of additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation. (81 FR 26697 at 26701; May 4, 2016).

The counties in the NYMA (and part of Orange County) were previously classified under the 1979 1-hour ozone NAAQS as severe, requiring RACT, while the remaining counties in the State were subject to RACT as part of the moderate classification or as part of the Ozone Transport Region (OTR). In the NYMA and other portions of Orange County, the previous severe classification resulted in a requirement for major sources to be defined as those having emissions of 25 tons per year or more for either VOC or NO_x.

In areas classified as moderate or areas located in the OTR (which includes all of New York State) under the 8-hour ozone standard, the definition for major sources in New York would have been 50 tons per year for VOC and 100 tons per year for NO_x. New York chose to retain the 1-hour ozone plan emission threshold of 25 tons per year in the NYMA and a portion of Orange County for purposes of the RACT analysis which results in a more stringent evaluation of RACT. The rest of the state follows major source definitions as previously mentioned.

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in areas classified as moderate (and higher) nonattainment for ozone, while section 184(b)(1)(B) of the CAA requires RACT in states located in the OTR. Specifically, these areas are required to implement RACT for all major VOC and NO_x emission sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by the EPA which establishes a “presumptive norm” for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NO_x control requirements. States must submit rules, or negative declarations when the State has no such

sources, for CTG source categories, but not for sources in ACT categories. However, RACT must be imposed on major sources of NO_x, and some of those major sources may be within a sector covered by an ACT document.

On March 6, 2015 (80 FR 12264), the EPA published a final rule that outlined the obligations that areas found to be in nonattainment of the 2008 ozone NAAQS need to address. This rule, herein referred to as the “2008 ozone implementation rule,” contained, among other things, a description of the EPA’s expectations for states with RACT obligations. The 2008 ozone implementation rule indicated that states could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by the EPA under a prior ozone NAAQS represents adequate RACT control levels for attainment of the 2008 ozone NAAQS, or a combination of these two approaches. In addition, a state must submit a negative declaration in instances where there are no CTG sources. The 2008 ozone implementation rule requires that states with nonattainment areas were required to submit RACT SIPs to EPA within two years from the effective date of nonattainment designation or by July 20, 2014.

III. What did New York submit?

On December 22, 2014, the New York Department of Environmental Conservation (NYSDEC or New York) submitted to the EPA a formal revision to its SIP. The SIP revision consists of information documenting how New York complied with the RACT requirements for the 2008 8-hour ozone NAAQS. In its December 2014 RACT submittal, New York certifies that the State’s submittal addresses the RACT requirements for the 2008 8-hour ozone standard, with the

exception of the CTG for industrial cleaning solvents. In New York's December 2014 RACT submittal, the State commits to revise 6 NYCRR Part 226, "Solvent Metal Cleaning Processes," to fulfill that requirement in a timely manner.

In New York's December 2014 RACT submittal, the State evaluated its existing RACT regulations which were adopted to meet the 1997 8-hour ozone standard to ascertain whether the same regulations constitute RACT for the 2008 8-hour ozone standard. In making its new 8-hour ozone RACT determination, New York relied on EPA's RACT Question and Answer document (May 18, 2006) and the most recent emission control technology and cost evaluations to determine what constitutes technically and economically feasible controls for specific sources. Accordingly, the basic framework for New York's December 2014 RACT SIP determination is described as follows:

- Identify all source categories covered by CTG and ACT documents.
- Identify applicable regulations that implement RACT.
- Certify that the existing level of controls for the 1997 8-hour ozone standard equals RACT under the 2008 8-hour ozone standard in certain cases.
- Declare which sources covered by a CTG and ACT do not exist within the state and/or that RACT is not applicable in certain cases.
- Identify and evaluate applicability of RACT to individual sources whose source category does not have a presumptive emission limit covered by a state-wide regulation.
- Identify potential RACT revisions.

- Identify statewide applicability of nonattainment new source review (NNSR).

New York certified that, with the exception of Part 226, “Solvent Metal Cleaning Processes,” which addresses VOC emissions from solvent metal cleaning processes, all RACT regulations with SIP approved State effective dates through the date when the RACT analysis was performed in 2014 are RACT for the 2008 8-hour ozone NAAQS because the RACT determinations issued by the State are consistent with the most recent control technology and economic considerations. The following discusses the results of New York’s analysis of RACT for the basic framework identified above.

CTGs and ACTs

New York reviewed its existing RACT regulations adopted under the 1979 1-hour and 1997 8-hour ozone standard to identify source categories covered by the EPA’s CTG and ACT documents. New York’s RACT SIP submittal lists the CTG and ACT documents and corresponding State RACT regulations that cover the CTG and ACT sources included in New York’s emissions inventory. For non-CTG major sources, 6 NYCRR Part 212, “General Process Emission Sources,” regulates RACT compliance for VOC and NO_x. Major sources of NO_x are regulated by 6 NYCRR Part 227-2, “Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_x).” In its December 2014 SIP submittal, New York certifies that major non-CTG sources are covered by the Part 212 RACT regulation.

With the exception of VOC emissions from industrial cleaning solvents, New York has

implemented RACT controls state-wide for all CTGs that the EPA has issued as of December 2014. The following table lists the RACT controls that have been promulgated in 6 NYCRR and the corresponding EPA SIP approval dates.

NY Regulation	Title	EPA approval date
Part 205	Architectural and Industrial Maintenance Coatings	12/13/04, 69 FR 72118
Part 211	General Prohibitions	7/12/13, 78 FR 41846
Part 212	General Process Emission Sources	7/12/13, 78 FR 41486
Part 214	Byproduct Coke Oven Batteries	7/20/06, 71 FR 41163
Part 216	Iron and/or Steel Processes	7/20/06, 71 FR 41163
Part 220	Portland Cement and Glass Plants	7/12/13, 78 FR 41486
Part 223	Petroleum Refineries	7/19/85, 50 FR 29382
Part 224	Sulfuric and Nitric Acid Plants	7/19/85, 50 FR 29382
Part 226	Solvent Metal Cleaning Processes	1/23/04, 69 FR 3237
Part 227-2	RACT for Oxides of Nitrogen (NOx)	7/12/13, 78 FR 41486
Part 228	Surface Coating Processes	3/04/14, 79 FR 12084
Part 229	Petroleum and Volatile Organic Liquid Storage and Transfer	12/23/97, 62 FR 67006
Part 230	Gasoline Dispensing Sites and Transport Vehicles	4/30/98, 63 FR 23668
Part 232	Dry Cleaning	6/17/85, 50 FR 25079
Part 233	Pharmaceutical and Cosmetic Processes	12/23/97, 62 FR 67006
Part 234	Graphic Arts	3/08/12, 77 FR 13974
Part 236	Synthetic Organic Chemical Manufacturing Facility Component Leaks	7/27/93, 58 FR 40059

New York's December 2014 RACT submittal contains a table (see Appendix A: Control Technique Guidelines and Alternative Control Techniques Documents) listing all the CTG categories and the corresponding State regulations or negative declarations that address the

requirements. The EPA had previously approved and incorporated into the SIP all of the State's regulations identified in Appendix A that address CTGs.

For many source categories, the existing New York rules have more stringent emission limits and/or lower thresholds of applicability than the recommendations contained in the CTG and ACT documents. In its submittal, New York identified some categories where controls may be more stringent than the recommended levels contained in the CTG and ACT documents and these are identified below in the section entitled "Additional Control Measures Needed for Attainment." New York considers and certifies that its SIP approved regulations meet the RACT requirements for the 2008 8-hour ozone standard.

Source Categories Not Applicable in New York State

New York previously certified to the satisfaction of the EPA (40 CFR 52.1683(a)) that no sources are located in the nonattainment area of the State which are covered by the following CTGs: (1) Natural Gas/Gasoline Processing Plants; (2) Air Oxidation Processes at Synthetic Organic Chemical Manufacturing Industries; and (3) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. In addition, New York previously certified to the satisfaction of the EPA (40 CFR 52.1683(b)) that no sources are located in the State which are covered by the CTG for Fiberglass Boat Manufacturing Materials. New York has reviewed its emission inventory and emission statements as required under 6 NYCRR 202-2, "Emission Statement," for stationary sources and affirms that there are no sources within New York State

for the following CTGs: (1) Manufacture of Vegetable Oils,⁵ and (2) Application of Agricultural Pesticides.

In New York's September 2006 RACT submittal for the 1997 8-hour ozone standard, the State indicated that there were no sources in the State that are applicable to the CTG related to industrial cleaning solvents; the State, however, has since determined that there are sources in the State that are applicable to this CTG. In New York's December 2014 RACT submittal, the State commits to revise and adopt in a timely manner 6 NYCRR Part 226, "Solvent Metal Cleaning Processes," to fulfill the requirements of the CTG for industrial cleaning solvents. New York must commit to adopt and submit 6 NYCRR Part 226 to EPA by a date certain but no later than one year from the effective date of the EPA's final rule making action on New York's December 2014 SIP submittal.

Source-Specific RACT Determinations

The 8-hour ozone RACT analysis must address source-specific RACT as it applies to a single regulated entity. A source-specific RACT determination applies to sources that have obtained a facility-specific emission limit or an alternative emission limit, i.e., a variance. A case-by-case RACT analysis is required for sources that are not defined by a specific source category covered

⁵ The CTG for the manufacturing of vegetable oils was published in June 1978 (see EPA-450/2-78-035) but in a March 1980 guidance document, entitled "Guidance for the Control of Volatile Organic Compounds Emitted by Ten Selected Source Categories," the EPA advised that the "states are not required, at this time, to develop regulations for the vegetable oil manufacturing industry." The EPA guidance has not been revised since the March 1980 guidance. At this time, the EPA considers the vegetable oil CTG as only guidance for states when they need to develop attainment plans in nonattainment areas.

by an existing state regulation, that are requesting a variance, or that are not addressed by a CTG. New York's RACT guidance entitled, "DAR-20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT)" outlines the process and conditions for granting source-specific RACT determinations. Under the CAA, these individual source-specific RACT determinations need to be submitted by the State as a SIP revision for the EPA's approval. Therefore, New York included in Appendix B of its December 2014 RACT SIP submittal a listing of VOC and NO_x source facilities that are subject to a RACT source-specific SIP revision under the 8-hour ozone SIP and corresponding emission limits, technology and the applicable regulation governing the RACT determinations. Consistent with the CAA, in September 2008, August 2010, and December 2013, New York submitted to the EPA SIP revisions that included most of the source-specific RACT revisions identified in Appendix B of the RACT SIP submittals. The EPA is performing its technical review of those submittals and will take separate rulemaking actions for each of the source-specific determinations.

In addition, in accordance with New York's NO_x RACT regulation, Part 227-2, owners of combined cycle combustion turbines are required to perform case-by-case RACT determinations that may result in more stringent emission limits. This RACT requirement was approved into the SIP on July 12, 2013 (78 FR 41846),

Additional Control Measures Needed for Attainment

In some instances, New York has adopted regulations with emission limits that are more stringent than those recommended by the CTGs and ACTs. For example, Part 228, "Surface

Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,” Part 234, “Graphic Arts,” Part 241, “Asphalt Pavement and Asphalt Based Surface Coatings,” and Part 227-2, “Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_x)” have each been adopted by the State with more stringent limits or applicability than what was recommended by the corresponding CTGs or ACTs.

In New York’s December 22, 2014 RACT SIP submittal, the State’s response to comments included an assessment that “once the NYMA is reclassified as ‘moderate’ nonattainment for the 2008 ozone NAAQS and an attainment SIP is required, DEC [New York] will undertake a review of its many NO_x control options to determine which would most efficiently and effectively reduce emission in the NYMA.” In this regard, the EPA recommends that New York quantify potential reductions for the following NO_x control options. New York has the opportunity to accomplish this when the State submits its RACT SIP for the NYMA which was recently reclassified to moderate. On July 19, 2017, New York, as part of its state rulemaking process, proposed its RACT SIP for the reclassified moderate NYMA.

Municipal Waste Combustors

During the public comment period on New York’s 2008 ozone RACT proposal a comment was submitted to the State proposing that Municipal Waste Combustors (MWCs) in the NYMA should be controlled to at least the RACT level. In New York’s response, the State indicated that once the NYMA is classified as moderate the State would undertake a review of its many control options to determine which would most effectively and efficiently reduce emissions in the

NYMA. As stated previously, the NYMA was reclassified as a moderate nonattainment area effective June 2016. In its response to comment, New York estimated that potential NO_x reductions of 1.50 and 1.75 tons per day could be obtained from MWCs located in the NYMA. New York's neighboring states of New Jersey and Connecticut have adopted RACT emission limits for MWCs that are more stringent than New York's current permitted limits. New York regulates MWCs under Part 219 (Incinerators) and Part 200 (General Provisions). While New York's regulations are consistent with sections 111(d) and 129 of the CAA for solid waste incinerators, New York should consider more stringent limits for purposes of attaining the 2008 ozone NAAQS. CAA section 129 emission requirements are based on maximum achievable control technology (MACT) that is at least comparable or better than RACT requirements. The EPA considers this beyond RACT for purposes of today's rulemaking. Therefore, New York should consider more stringent RACT level NO_x emission limits for MWCs located in the NYMA to help attain the 2008 ozone NAAQS.

Simple Cycle Combustion Turbines (firing distillate oil or more than one fuel)

New York's NO_x RACT regulation at Part 227-2 has set NO_x emission limits of 100 parts per million (ppmvd)⁶ for simple cycle combustion turbines firing distillate oil or more than one fuel. New York's neighboring state of Connecticut has adopted more stringent NO_x emission limits of 40-75 ppm for June 2018 and 40-50 ppm for June 2023 for this source category. New Jersey has

⁶ As measured on a dry volume basis and corrected to 15% oxygen.

also adopted more stringent NO_x emission limits of 42 ppm.⁷ Therefore, New York should consider more stringent RACT level NO_x emission limits for simple cycle turbines located throughout the State for purposes of helping to attain the 2008 ozone NAAQS.

NYCRR Part 222 for Distributed Generation (DG)

New York has adopted 6 NYCRR Part 222 for DG to address peaking electric generation units which will help address emissions resulting from high electric demand days (HEDD). Assuming Part 222 remains in effect after current litigation concerning it is resolved, New York should submit Part 222 as a SIP revision for EPA approval. Alternatively, New York should consider other regulations for addressing HEDD. In addition, as stated previously, the EPA also recommends that New York review the simple cycle combustion turbine limit of 100 ppmvd and consider adopting a more stringent limit similar to that adopted by Connecticut.

Oil and Natural Gas CTG

On October 27, 2016, the EPA announced in the Federal Register (81 FR 74798) the availability of the oil and natural gas CTG. This CTG provides information for states to determine RACT for VOC emissions from certain oil and natural gas industry sources. The EPA recommends that New York review this CTG for possible statewide VOC reductions. Effected states are required to submit a SIP revision by October 20, 2018.

⁷ 42 ppm is equivalent to 1.6 lb/megawatt-hour which is the limit at Table 7 of New Jersey's NO_x RACT regulation, Subchapter 19. Subchapter 19 at Table 7 notes that the limit is applicable to high electric demand day (HEDD) units or a stationary combustion turbine that is capable of generating 15 MW or more and that commenced operation on or after May 1, 2005. In accordance with Subchapter 19 definitions, units that commence operation on or after May 1, 2005 are neither HEDD nor non-HEDD units.

Statewide nonattainment new source review (NNSR)

New York provides NNSR certification in the State's April 4, 2013 infrastructure SIP submittal for the 2008 ozone NAAQS. New York provides additional affirmation in its December 2014 RACT submittal that, since the State is located in the OTR, NNSR applies statewide for emissions of VOC and NO_x for new major facilities or modifications to existing major or minor sources. New major facilities or modification to existing major or minor facilities in New York State are subject to the provisions of 6 NYCRR Part 231, "New Source Review for New and Modified Facilities." NNSR requires the application of Lowest Achievable Emission Rate (LAER) which is more stringent than RACT. Furthermore, New York certifies in its December 2014 submittal that the State also relies upon federal rules such as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) regulated under CAA section 112. NESHAPs establish MACT which may be more stringent than RACT to control hazardous air pollutants. Therefore, the EPA is proposing to approve New York's certification that nonattainment NNSR applies statewide for NO_x and VOC emissions from stationary sources.

IV. What is the EPA's evaluation of New York's SIP submittal?

New York submitted a state-wide RACT assessment on December 22, 2014. The RACT submission from New York consists of: (1) a certification that previously adopted RACT controls in New York's SIP for various source categories that were approved by the EPA under the 1-hour and the 1997 8-hour ozone standards are based on the currently available technically and economically feasible controls and that they continue to represent RACT for the 2008 8-hour

ozone standard for implementation purposes; (2) a number of source-specific RACT determinations submitted to the EPA for approval; (3) a negative declaration that for certain CTGs and/or ACTs there are no sources within New York State or that there are no sources within New York above the applicability threshold; and (4) a commitment to revise and adopt, and submit as a SIP revision a new or more stringent regulation Part 226, that represent a RACT control level for sources subject to the industrial cleaning solvents CTG.

The EPA has reviewed New York's RACT analysis and has determined that the state-wide RACT analysis submitted on December 22, 2014 does not fully address the RACT requirement consistent with section 182(b)(2) of the CAA because New York has not adopted the RACT measure, 6 NYCRR Part 226, related to sources subject to the industrial cleaning solvents CTG.

Therefore, the EPA is proposing to conditionally approve New York's state-wide RACT SIP based on the State's commitment to submit Part 226 by a date certain but no later than one year from the effective date of the EPA's final rule making action on New York's December 2014 SIP submittal. The EPA encourages New York to accelerate its rulemaking process and adopt the control measures for sources subject to the industrial cleaning solvents CTG. The EPA is proposing to approve the remainder of New York's December 22, 2014 SIP submittal as it applies to non-CTG major sources of VOCs and to major sources of NO_x.

Furthermore, the EPA encourages New York to strengthen its ozone SIP by adopting, and submitting as SIP revisions, additional control measures needed for attainment of the 8-hour

ozone standard by: (1) considering the adoption of more stringent emission limits for MWCs located in the NYMA; (2) considering the adoption of more stringent emission limits for simple cycle combustion turbines firing distillate oil or more than one fuel; (3) adopting and submitting a regulation that addresses the October 2016 oil and natural gas CTG; and (4) submitting a SIP revision that addresses HEDD sources.

V. How could New York get full approval for this SIP revision?

The EPA is proposing to conditionally approve New York's state-wide RACT submittal dated December 22, 2014 for purposes of satisfying the 2008 8-hour ozone standard RACT requirement. New York must correct the deficiency discussed in section IV by revising, adopting and submitting to the EPA, a new or more stringent regulation, Part 226, that represent a RACT control level for sources subject to the industrial cleaning solvents CTG. New York must commit to adopt and submit Part 226 to EPA as a SIP revision by a date certain but not later than one year from the EPA's final action on this SIP action.

The EPA's conditional approval relates to New York's state-wide RACT SIP revision as it applies to the relevant CAA CTG requirements for VOC major sources. The EPA is proposing to approve the remainder of New York's December 22, 2014 SIP submittal as it applies to non-CTG major sources of VOCs and to major sources of NO_x.

The EPA is also proposing to approve New York's NNSR certification as sufficient for purposes of the 2008 ozone NAAQS.

Under section 110(k) of the CAA, the EPA may conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but not later than one year after the date of approval of the plan revision. If the EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit Part 226 that addresses the industrial cleaning solvents CTG. If New York fails to meet its commitment within the specified time period for any portion of the deficient SIP requirement discussed in section IV above, the conditional approval will, by operation of law, become a disapproval. The EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved SIP for New York and an 18 -month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1) would commence. The EPA subsequently will publish a document in the Federal Register notifying the public that the conditional approval converted to a disapproval. If New York meets its commitment within the applicable time frame, the conditionally approved submission will remain as part of the SIP until the EPA takes final action approving or disapproving the SIP requirement in question.

If the EPA disapproves a State's new submittal, the conditionally approved RACT SIP for the 2008 ozone standard will also be disapproved at that time. If the EPA approves the submittal, the State's RACT SIP for the 2008 ozone standard will be fully approved in its entirety and replace the conditionally approved RACT SIP for the 2008 ozone RACT standard in the SIP.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments as discussed in the ADDRESSES section of this rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; 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 proposed rulemaking action, pertaining to New York's 2008 8-hour ozone RACT submission 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide,

Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: September 6, 2017.

Catherine R. McCabe,
Acting Regional Administrator,
Region 2.

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