



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0511; FRL-9994-92-Region 2]

**Approval of Air Quality Implementation Plans;
New York; Infrastructure Requirements for the 2008 Ozone, 2010 Sulfur Dioxide, and 2012
Fine Particulate Matter National Ambient Air Quality Standards**

AGENCY: Environmental Protection Agency. (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain elements of New York's State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 Ozone; 2010 Sulfur Dioxide; and 2012 particulate matter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

DATES: Comments must be received on or before **Insert date 30 days after date of publication in the Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2018-0511** 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>.

FOR FURTHER INFORMATION CONTACT:

Edward J. Linky, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3764, or by e-mail at Linky.Edward@epa.gov

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I. What Action is EPA Proposing?

The EPA is proposing to approve certain elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the following National Ambient Air Quality Standards (NAAQS or standard): 2008 Ozone, 2010 sulfur dioxide (SO₂), and 2012 particulate matter of 2.5 microns or less (PM_{2.5}). As explained below, the EPA is proposing to find that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

II. What is the Background Information?

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP a plan that provides for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. The EPA commonly refers to such state plans as “infrastructure SIPs.”

- On March 12, 2008, the EPA promulgated a revised NAAQS for ozone. 73 FR 16436 (March 27, 2008).
- On June 2, 2010, the EPA promulgated a revised primary NAAQS for SO₂. 75 FR 35520 (June 22, 2010).
- On December 14, 2012, the EPA promulgated a revised primary NAAQS for PM_{2.5} for the annual standard. 78 FR 3086 (Jan. 15, 2013).

The New York State Department of Environmental Conservation (NYSDEC) submitted the following revisions to its Infrastructure State Implementation Plan (ISIP):

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO₂ ISIP submitted on October 3, 2013
- 2012 PM_{2.5} ISIP submitted on November 30, 2016

On August 26, 2016 (81 FR 58849), the EPA published its action on certain elements of NYSDEC's April 4, 2013 SIP submittal pertaining to the 2008 Ozone ISIP. The EPA's action addressed CAA section 110(a)(2)(D)(i)(I) which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any other state and CAA section 110(a)(2)(D)(i)(II) which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to protect visibility (prong 4). The EPA disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849, 58855 (August 26, 2016).

The EPA approved portions of New York's infrastructure SIP submittals for the 2008 Ozone and 2010 SO₂ NAAQS¹ pertaining to CAA sections 110(a)(2)(C), (D)(i)(II) (prong 3), and (J), including PSD interstate transport provisions.² 81 FR 95047 (December 27, 2016).

III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS.

Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to the EPA plans to implement, maintain and enforce each of the NAAQS promulgated by the EPA. The EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard.

IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements of CAA sections 110(a)(1) and (2), relevant to this action, are discussed in the following EPA guidance documents: EPA's October 2, 2007, memorandum

¹ The approval also included the 2008 Lead NAAQS, which is not a subject of this action.

² CAA 110(a)(2)(C)(requires SIPs to include a program to provide for enforcement of emission limitations and other control measures described in CAA 110(a)(2)(A)); CAA 110(a)(2)(D)(i)(II)(which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state); CAA 110(a)(2)(J)(requirements related to consultation, public notification and PSD and visibility protection).

entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards;” September 25, 2009, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards;” September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2);”³ and March 17, 2016, “Information on Interstate Transport “Good Neighbor” provision for the 2012 Fine Particulate Matter (PM) National Ambient Air Quality Standards under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).”

The EPA reviews each infrastructure SIP submission with the applicable statutory provisions of CAA 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): emission limits and other control measures;
- 110(a)(2)(B): ambient air quality monitoring/data system;
- 110(a)(2)(C): program for enforcement of control measures and for construction or modification of stationary sources;
- 110(a)(2)(D)(i)(I) and (II): interstate pollution transport;
- 110(a)(2)(D)(ii): interstate and international pollution abatement;
- 110(a)(2)(E): adequate resources and authority, conflict of interest, oversight of local

³ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” can be found at: <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html>.

governments and local authorities;

- 110(a)(2)(F): stationary source monitoring and reporting;
- 110(a)(2)(G): emergency powers;
- 110(a)(2)(H): future SIP revisions;
- 110(a)(2)(I): plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): air quality modeling and data;
- 110(a)(2)(L): permitting fees;
- 110(a)(2)(M): consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 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 of the CAA. See 77 FR 46354 (August 3, 2012) and 77 FR 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 nonattainment permit program requirements of section 110(a)(2)(C) for 2012 PM_{2.5} or the nonattainment planning requirements related to section 110(a)(2)(I) for the 2008 Ozone, 2010 SO₂, or 2012 PM_{2.5}.

This action partially addresses Element D (interstate pollution transport, interstate and international pollution abatement). As mentioned in section II, the EPA previously disapproved 110(a)(2)(D)(i)(I) (prongs 1 and 2) and approved 110(a)(2)(D)(i)(II) (prong 4) for the 2008 Ozone NAAQS. 81 FR 58849 (Aug. 26, 2016). The EPA approved 110(a)(2)(D)(i)(II) (prong 3) for the 2008 Ozone and 2010 SO₂ NAAQS. 81 FR 95047 (December 27, 2016). This action addresses the remaining element D provisions for 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS, except for 110(a)(2)(D)(i)(I) (prongs 1 and 2) provisions for the 2010 SO₂ NAAQS and the 2012 PM_{2.5} NAAQS, which will be addressed in a subsequent action by the EPA. Therefore, with respect to element D, this action addresses:

- 110(a)(2)(D)(i)(II) (prong 3) for the 2012 PM_{2.5} NAAQS; and
- 110(a)(2)(D)(i)(II) (prong 4) for the 2010 SO₂ NAAQS and 2012 PM_{2.5} NAAQS
- 110(a)(2)(D)(ii) for 2008 Ozone NAAQS, 2010 SO₂ NAAQS and 2012 PM_{2.5} NAAQS

V. What is EPA's approach to the review of infrastructure SIP submissions?

The discussion of the EPA's approach to the review of infrastructure SIP submissions is detailed in the "Technical Support Document for the EPA's proposed Rulemaking for the New York State Implementation Plan Revision for Meeting the Infrastructure Requirements in the Clean Air Act" dated 2019 (TSD). The TSD is available in the electronic docket (EPA-R02-OAR-2018-0511) at www.regulations.gov.

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make Infrastructure SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of

CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁴ Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁵ The EPA has other authority to address issues concerning a state's implementation of its SIP.

VI. What did New York Submit?

NYSDEC submitted the following SIP submittals which address the infrastructure requirements for the identified NAAQS:

- 2008 Ozone ISIP submitted on April 4, 2013
- 2010 SO₂ ISIP submitted on October 3, 2013
- 2012 PM_{2.5} ISIP submitted on November 30, 2016

⁴ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on New York's infrastructure SIP to address the Nitrogen Dioxide NAAQS, 85 FR 25066, 25067 (May 2, 2014).

⁵ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018).

New York's section 110 submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2008 Ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS. The plans reference the current New York Air Quality SIP, the New York Codes, Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by the EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the Internet at <https://www.epa.gov/sips-ny>.

VII. How has the State addressed the elements of the section 110(a)(1) and (2)

“infrastructure” provisions?

Infrastructure SIPs for different criteria pollutants can have common aspects which are consistent for each NAAQS (e.g., authority to promulgate emission limitations, enforcement, air quality modeling capabilities, adequate personnel, resources and legal authority). The EPA compared New York's Infrastructure SIP submittals for the 2008 Ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS with New York's Infrastructure SIP submittals for the 1997 8-hour Ozone and the 1997 and 2006 PM_{2.5} NAAQS, on which the EPA took final action approving certain elements and sub-elements. 78 FR 37122 (June 20, 2013). Certain elements of the infrastructure SIP submittals are not pollutant specific. Based upon the EPA's comparison, the EPA is proposing to determine that the information provided in New York's Infrastructure SIP submittal for the 2008 Ozone, 2010 SO₂ and the 2012 PM_{2.5} NAAQS for elements E, F, H, K, L, and M is consistent with or identical to the information provided in New York's Infrastructure SIP submittal for the 1997 8-hour ozone, 1997 and 2006 PM_{2.5} NAAQS. The EPA's rationale for

approving certain elements of New York's Infrastructure SIP for 2008 Ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS is the same as the rationale for approving those elements of New York's 1997 8-hour ozone and 1997 and 2006 PM_{2.5} Infrastructure SIPs, so the EPA is not repeating this evaluation in today's proposal. Instead, the reader is referred to the EPA's evaluation of the SIP submittals for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} Infrastructure SIPs detailed in the following documents: (1) three documents titled "Technical Support Document for EPA's Proposed Rulemaking for the New York's State Implementation Plan Revision: State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act" dated December 13, 2007, October 2, 2008 and March 15, 2010; (2) the EPA's rulemaking proposing approval of certain elements of New York's Infrastructure SIP submittal for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS, 78 FR 25236 (April 30, 2013); (3) the EPA's final rule approving certain elements of New York's Infrastructure SIPs for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS, 78 FR 37122 (June 20, 2013). These documents are available in the electronic docket for today's proposed action at www.regulations.gov. We are, of course, accepting comments on that rationale as it applies to this proposed approval of New York's Infrastructure SIP for the 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

As discussed in the following sections, the EPA is providing a more detailed analysis of the remaining elements of New York's 2008 Ozone, 2010 SO₂, and 2012 PM_{2.5} Infrastructure SIP submittals namely elements A, B, C, D, G, and J.

In summary, the EPA is proposing approval of the following elements and sub-elements of New

York's Infrastructure SIP submittal for 2008 Ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS (except as indicated): 110(a)(A) [emission limits and other control measures]; 110(a)(2)(B) [ambient air quality monitoring/data system]; 110(a)(2)(C) [program for enforcement of control measures] for the 2012 PM_{2.5} NAAQS only; 110(a)(2)(D)(i)(II) [interstate transport], Prong 3 for 2012 PM_{2.5} NAAQS, and Prong 4 for the 2010 SO₂ NAAQS and the 2012 PM_{2.5} NAAQS; 110(a)(2)(D)(ii) [interstate and international pollution abatement]; 110(a)(2)(E)[adequate resources, state boards/conflict of interest, oversight of local governments and local authorities];110(a)(2)(F) [stationary source monitoring]; 110(a)(2)(G)[emergency power]; 110(a)(2)(H) [future SIP revisions]; 110(a)(2)(J) [consultation with government official, public notification, and PSD for the 2012 PM_{2.5} NAAQS only]; 110(a)(2)(K) [air quality and modeling/data]; 110(a)(2)(L) [permitting fees]; and 110(a)(2)(M) [consultation/participation by affected local entities].

The EPA is not acting on New York's submittal for 2012 PM_{2.5} as it relates to nonattainment provisions, including the nonattainment NSR program required by part D, in section 110(a)(2)(C) and is not acting on New York's submittals for 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} as they relate to the measures for attainment required by section 110(a)(2)(I) because the State's Infrastructure SIP submittals do not include nonattainment requirements and the EPA will act on them when and if necessary. The EPA is also not acting on the visibility protection portion of element J for the 2012 PM_{2.5} submittal.

Element A: Emission Limits and Other Control Measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, measures, means, or techniques, and schedules for compliance. In each of the submittals, New York identifies

provisions of its federally enforceable SIP that contain enforceable emission limits and other control measures. The EPA is proposing to determine that New York has met the requirements of 110(a)(2)(A) of the CAA with respect to the 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

Element B: Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, to monitor, compile and analyze ambient air quality data, and to make these data available to EPA upon request. NYSDEC submittal for the 2012 PM_{2.5} NAAQS details the State's authority to adopt and enforce provisions of the SIP. The EPA proposes to find that these provisions demonstrate that NYSDEC has the requisite authority to support element B. NYSDEC states that it will continue to operate an air quality monitoring network that complies with the EPA requirements and will submit this data to the EPA's Air Quality System (AQS). NYSDEC's submittals state that they measure air pollutants at more than 50 sites across the State using continuous and/or manual instrumentation, in accordance with 40 CFR Part 53 and 58. These sites are part of the federally-mandated National Cores Sites (NCORE) and the State and Local Air Monitoring Stations (SLAMS) network. Near real time direct reading measurements include gaseous criteria pollutants (ozone, SO₂, NO_x and carbon monoxide, PM_{2.5} and meteorological data). Filter based PM_{2.5} samples are collected and shipped to a laboratory for analysis. In January 2017, in accord with the Data Requirements Rule for the 2010 SO₂ standard,⁶ NYSDEC established four monitors near two large sources, one in St. Lawrence County (Alcoa Massena Aluminum Plant) and the other in Tompkins County (Cayuga Power Plant) to characterize SO₂ air quality in the area.

⁶ August 21, 2015 (80 FR 50152)

NYSDEC prepares an Annual Monitoring Network Plan that describes in detail the specifics of the monitoring network as required by 40 CFR 58.10. The EPA is therefore proposing that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2008 Ozone, 2010 SO₂⁷ and 2012 PM_{2.5} NAAQS.

Element C: Program for enforcement of control measures and for construction or

modification of stationary sources: Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) of Air Quality and minor source new source review. This element is being evaluated for the 2012 PM_{2.5} NAAQS only.

Enforcement of SIP measures

New York's PM_{2.5} infrastructure SIP submittal explains that its SIP is a compilation of rules and regulations that have been duly promulgated by NYSDEC in accordance with its statutory authority and consistent with the New York State Administrative Procedures Act. New York cites Environmental Conservation Law (ECL) section 19-0305, which authorizes the Commissioner to enforce NYSDEC codes, rules and regulations established in accordance with ECL Articles 19 and 71. This includes all control measures that have been adopted into the SIP. New York states that its authority for enforcement of emission limits and control measures is provided for in "Enforcement of Article 19 and Air Pollution Emergency Rules and

⁷ EPA notes that designations for the 2010 SO₂ standards were finalized in three rounds on July 25, 2013 (78 FR 47191), August 5, 2013 (78 FR 47191), July 12, 2016 (81 FR 45039), December 13, 2016 (81 FR 89870), and January 9, 2018 (83 FR 1098).

Regulations.” ECL Article 71, Title 21. New York also identifies the enforcement provisions included in 6 NYCRR Part 201, specifically 201-1.13 which gives NYSDEC access to regulated facilities in order to determine compliance.

Regulation of Minor Sources and Minor Modifications

New York states that it permits minor sources of air pollution through 6 NYCRR Subparts 201-4, “Minor Facility Registration” and 201-5, “State Facility Permits” and applicable State and Federal regulations.

PSD Permitting of Major Sources

New York references the State’s PSD and Nonattainment New Source Review (NNSR) permitting program contained in 6 NYCRR Part 231, “New Source Review for New and Modified Facilities” and the State’s permitting program contained in 6 NYCRR 201, “Permits and Registrations.” The EPA approved New York’s PSD and NNSR program into the SIP on November 17, 2010 (75 FR 70140). New York adopted revisions to Part 231 and 201 to implement PM_{2.5} provisions that were not included in the earlier rule and submitted them to the EPA on October 12, 2011. The EPA approved the SIP revision on December 27, 2016 (81 FR 95047).

The EPA is proposing to approve New York’s Infrastructure SIP for the 2012 PM_{2.5} NAAQS with respect to the program for enforcement of control measures requirements of element C. The EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. The EPA is proposing to find that New York meets the

requirement to have a SIP approved minor new source review program. The EPA also finds that, based on the approval of New York's PSD program, New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements.

As discussed in Section IV, the EPA is not addressing the nonattainment permit program requirements of section 110(a)(2)(C) for 2012 PM_{2.5} NAAQS.

The EPA proposes to determine that New York has met the requirements of section 110(a)(2)(C) of the CAA with respect to the 2012 PM_{2.5} NAAQS.

Element D: Interstate transport: Section 110(a)(2)(D) of the CAA is divided into two subsections, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four "prongs" the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). Section 110(a)(2)(D)(i)(I) is not being reviewed in this action. Section 110(a)(2)(D)(i)(II) prohibits any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Subsection 110(a)(2)(D)(ii) addresses interstate and international pollution

abatement and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

The EPA acted on portions of 110(a)(2)(D)(i)(I) and (II) with respect to 2008 Ozone and 2010 SO₂ NAAQS. The EPA disapproved the portion of the 2008 Ozone infrastructure SIP submittal addressing CAA section 110(a)(2)(D)(i)(I), concerning nonattainment of the NAAQS (prong 1), and interfering with maintenance of the NAAQS (prong 2) and approved the portion of the 2008 Ozone infrastructure SIP submittal addressing CAA section 110(a)(2)(D)(i)(II) concerning visibility (prong 4).⁸ With respect to the requirements of 110(a)(2)(D)(i)(II) (prong 3), the EPA previously approved⁹ this portion of New York's SIP submissions for 2008 Ozone and 2010 SO₂ NAAQS. New York's SIP submissions that address section 110(a)(2)(D)(i)(I) [prongs 1 and 2] for 2010 SO₂ NAAQS, and 2012 PM_{2.5} NAAQS are currently being reviewed by the EPA, and the Agency will take action at a later date. Our evaluation of New York's submittals is limited to assessing whether New York's submittals meet the requirements of 110(a)(2)(D) under review in this proposal.

For the 2012 PM_{2.5} NAAQS, the EPA is proposing that New York satisfies the 110(a)(2)(D)(i)(II) requirement for prong 3. New York relies on its PSD program to prevent significant deterioration of air quality within the state and in other nearby states. New York's SIP approved 6 NYCRR Part 231 includes both PSD permitting requirements, which regulate

⁸ August 26, 2016 (81 FR 58849)

⁹ December 27, 2016 (81 FR 95047)

major sources in attainment areas, and Nonattainment New Source Review requirements, which regulate major sources in nonattainment areas. New York has affirmed that the program remains in effect and applies to PM_{2.5}. New York adopted revisions to Part 231, which included provisions to implement PSD/Nonattainment New Source Review requirements for PM_{2.5} and submitted them to EPA in October 12, 2011. The EPA approved these State revisions to Part 231 in the December 27, 2016 Federal Register issue.

The EPA is proposing that New York satisfies the 110(a)(2)(D)(i)(II) requirement for visibility (prong 4). New York addresses visibility protection requirements for both the 2010 SO₂ and 2012 PM_{2.5} NAAQS through its EPA-approved Regional Haze SIP.¹⁰ The EPA's regional haze rule requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.¹¹ The regional haze rule also requires the state to submit periodic reports describing progress towards reasonable progress goals established for regional haze and the adequacy of the state's regional haze SIP. Thus, New York's approved Regional Haze SIP and approved reasonable progress plan ensure that emissions from sources within the State are not interfering with measures to protect visibility in other states.

The EPA notes that New York's Regional Haze SIP was supplemented with a Federal Implementation Plan (FIP) to address two sources, Danskammer Generating Station, Unit No. 4

¹⁰ August 28, 2012 (77 FR 51915)

¹¹ 40 CFR part 51, subpart P.

(Danskammer) and Roseton Generating Station, Units 1 and 2 (Roseton), where the Agency disapproved New York's BART determinations. Following the EPA's action on New York's Regional Haze Plan, the Title V permits for Danskammer and Roseton were updated by New York to incorporate the FIP limits established by the EPA. The Title V permits for Danskammer and Roseton were submitted to the EPA as SIP revisions on August 20, 2015, and April 18, 2017, respectively. The EPA published the SIP approval for Danskammer on December 4, 2017 (82 FR 57126) and the SIP approval for Roseton on February 16, 2018 (83 FR 6970).

Regarding section 110(a)(2)(D)(ii), which relates to interstate and international pollution abatement, the EPA is proposing to approve New York's submissions for infrastructure element 110(a)(2)(D)(ii) for the 2008 Ozone, 2012 PM_{2.5} and the 2010 SO₂ NAAQS. New York's SIP-approved PSD program is consistent with 40 CFR 51.166(q)(2)(iv) and requires a source to notify air agencies whose lands may be affected by emissions from that source. (See 78 FR 25236, 25239; 6 NYCRR 231-7.4 (f) and 8.5(f)). New York has no pending obligations under section 115 or 126 of the CAA.

Element E: Adequate Resources: Section 110(a)(2)(E) requires each state to provide necessary assurances that the state will (i) have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) will comply with the requirements respecting state boards under CAA section 128, and (iii) where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision. This element of the

submittals is common to New York infrastructure submittals that the EPA has previously approved and, therefore, as discussed in Section VII, the EPA is not repeating the rationale for approving this element of the submittals. See 78 FR 37122 (June 20, 2013). The EPA proposes to approve the submittals for the 2012 PM_{2.5}, 2008 Ozone, and 2010 SO₂ NAAQS.

Element F: Stationary Source Monitoring and Reporting: Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. This element of the submittals is common to New York infrastructure submittals that the EPA has previously approved and, as discussed in Section VII, EPA, therefore, is not repeating the rationale for proposing to approve this element of the submittals. New York's submittal for the 2012 NAAQS PM_{2.5} NAAQS provides more detailed information regarding their authority for stationary source monitoring and reporting in further support of the EPA's proposed approval of this element.

Element G: Emergency power: Section 110(a)(2)(G) requires states to provide for emergency authority to address activities causing imminent and substantial endangerment to public health and requires states to submit adequate contingency plans to implement the emergency episode provisions in their SIPs.

The EPA requires that Infrastructure SIP submittals should meet the applicable contingency plan requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) ("Prevention of Air Pollution Emergency Episodes"). Subpart H requires states that have air quality control regions

identified as either Priority I, Priority IA or Priority II to develop emergency episode contingency plans.

Articles 3 and 19 of the ECL provide New York State with the authority to address air pollution emergencies. ECL section 3-0301, entitled “General functions power and duties of the DEC and the commissioner,” authorizes NYSDEC to prevent and control air pollution emergencies as defined in ECL section 1-0303. ECL articles 3 and 19 are implemented through 6 NYCRR part 207, “Control Measures for Air Pollution Episodes” which the EPA approved as part of the New York SIP. See 46 FR 55690 (November 12, 1981).

The EPA also notes that the NYSDEC maintains Air Pollution Episode Procedures (APEPs) also called Alert Criteria (updated December 2018 at <http://www.dec.ny.gov/chemical/60440.html>).

In October 2009, NYSDEC completed a comprehensive revision of the APEPs to address updated PM_{2.5} significant harm levels (SHLs) along with revised values for ozone episodes. This revision involved updating contact information for the Bureaus of Air Quality Assurance, Stationary Sources, and Air Quality Surveillance, and the Impact Assessment and Meteorology Section. Local level emergency contacts were also updated. NYSDEC’s APEPs include air pollution episode criteria for PM_{2.5}, coarse PM₁₀, ozone, carbon monoxide, SO₂ and nitrogen dioxide, based on SHLs established by the EPA.

The EPA proposes that New York has met the requirements of section 110(a)(2)(G) for the 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

Element H: Future SIP Revisions: Section 110(a)(2)(H) requires states to have authority to revise their SIPs in response to changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. This element of the submittals is common to New York infrastructure submittals that the EPA has previously approved and, as discussed in Section VII, the EPA is not repeating the rationale for proposing to approve this element of the submittals.

Element I: Plan Revisions for Nonattainment Areas (under part D): Section 110(a)(2)(I) requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. The EPA has determined that CAA 110(a)(2)(D)(I) (Element I) is not applicable to the infrastructure SIP process. The EPA takes action on part D nonattainment plans through a separate process.

Element J: Section 110(a)(2)(J): Consultation with Government Officials, Public

Notification, and PSD and Visibility Protection: As mentioned above, the EPA previously approved portions of New York's infrastructure SIP submittals for the 2008 Ozone and 2010 SO₂ NAAQS¹² pertaining to CAA sections 110(a)(2)(J). See 81 FR 95047 (December 27, 2016). Therefore, this proposal only pertains to the EPA's review of element J as it applies to 2012 PM_{2.5} NAAQS.

Consultation with Government Officials

¹²The approval also included the 2008 Lead NAAQS, which is not a subject of this action.

The CAA Section 110(a)(2)(J) requires states to meet the applicable requirements of CAA 121 relating to consultation. CAA Section 121 requires states to provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, Tribal Nations, Federal Land Managers (FLMs) and Regional Organizations.

NYSDEC has participated in the consultation process of the Regional Haze SIP (40 CFR 51.308) with the FLMs, states, and Tribal Nations of the Mid Atlantic/Northeast Visibility Union (MANE/VU) and other regional planning organizations where emissions from New York State are reasonably anticipated to contribute to visibility in Class 1 Areas.

NYSDEC's Regional Haze SIP was submitted to the EPA on March 15, 2010. In a Federal Register notice dated August 28, 2012 (77 FR 51915), the EPA issued a final rule, effective September 27, 2012, partially approving the New York State Regional Haze SIP and promulgated a Federal Implementation Plan (FIP) to address two sources (Danskammer Generation Station Unit No. 4 and Roseton Generation Station).

On December 4, 2017 (82 FR 57126) the EPA approved a source specific revision to the New York State SIP that established BART emissions limits for the Danskammer Generation Station Unit No. 4 that are identical to the emission limits established by the EPA's FIP for Danskammer Unit No. 4. In conjunction with this SIP approval the EPA withdrew those portions of the FIP that address BART for Danskammer Unit No. 4. (82 FR 57126, December 4, 2012).

On February 16, 2018 (83 FR 6970), the EPA approved a source specific SIP revision for Roseton Generation Station Units 1 and 2. This SIP revision established BART emissions limits for the Roseton Generation Station Units 1 and 2 that are identical to those established by the FIP. The EPA's February 16, 2018 final rule for Roseton Units 1 and 2 withdrew the FIP that addressed BART for these two units.

On December 22, 2005, NYSDEC established a SIP Coordinating Council consisting of senior policy representatives from 19 state agencies and authorities, and a SIP Task Force consisting of officials from 37 local governments and designated organizations of elected officials. The SIP Coordinating Council provides a means to keep state agencies and local governments informed of planned SIP activities and deadlines, and also provides a forum for discussion of SIP requirements and implications, such as effects on transportation planning. The SIP Task Force provides a means of facilitating local involvement at the MPO and county level. Periodic meetings of both groups were held during the ozone and PM_{2.5} SIP development period for the 1997 NAAQS and continue as necessary to address nonattainment of the PM_{2.5} NAAQS and other revised standards.

The EPA proposes to find that New York has met the requirements of CAA 110(a)(2)(J) for consultation with government officials.

Public Notification

CAA section 110(a)(2)(J) also requires state plans to meet the public notification requirements of CAA 127: to notify the public if NAAQS are exceeded in an area, advise the public of health

hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

All ambient air concentrations captured by the State's PM_{2.5} monitoring network are submitted to the Air Quality System for public access. Municipalities have emergency response plans recommended by the New York State Office of Emergency Management and the Federal Emergency Management Agency that provide for public information and notification in the case of large-scale emergencies.

The NYSDEC's Website at <http://www.dec.ny.gov/chemical/34985.html> contains an Air Quality Index (AQI) for reporting daily air quality to the public. It describes how clean or polluted the air is and what associated health effects might be a concern. When levels of ozone and/or fine particles exceed an AQI of 100, an Air Quality Health Advisory is issued alerting sensitive groups to take necessary precautions. The NYSDEC in cooperation with the New York State Department of Health posts warnings on the above referenced web site and issues press releases to local media outlets if dangerous conditions are expected to occur. The Air Quality Index displays the predicted AQI value for eight regions in New York State. It also displays the observed values for the previous day. Air Quality measurements from New York's continuous monitoring network are updated hourly where available. Parameters monitored include ozone, fine particulate, carbon monoxide, sulfur dioxide, nitrogen oxides, methane/hydrocarbons and meteorological data.

Emissions of PM_{2.5} come from mobile sources, stationary sources, aviation sources, wildfires and fires prescribed and open burning and woodstoves. Control measure includes public education on proper burning and consumer recycling and disposal of waste in landfills. Programs to replace outdated stoves, low sulfur fuel, diesel engine retrofits and idling of mobile sources are also included as part of the public awareness program.

The public is afforded the opportunity to participate in the regulatory process by submitting written comments on each major SIP revision and petitioning for a public hearing on such revisions.

The EPA proposes to find that New York has met the requirements of CAA 110(a)(2)(J) for public notification.

Prevention of Significant Deterioration.

New York has a SIP approved PSD/NSR program that covers all criteria pollutants including PM_{2.5}. 6 NYCRR Part 231 “New Source Review for New and Modified Facilities” was approved by the EPA on November 17, 2010 (75 FR 70142). 6 NYCRR Part 231 regulates major sources under NSR (when the source is located in a nonattainment area) and PSD (when the source is located in an attainment area). NYSDEC adopted a revision to 6 NYCRR Part 231 to implement PM_{2.5} provisions in 2011. These revisions were submitted to the EPA for inclusion in the SIP on October 12, 2011. The EPA approved the State’s revision to Part 231 in a December 27, 2016 action (81 FR 95047).

The EPA proposes to approve New York's infrastructure SIP with respect to the requirements of the PSD sub-element of CAA 110(a)(2)(J).

Visibility Protection

Visibility Protection and regional haze program requirements under Section 169A and B of Part C are being met by NYSDEC through separate efforts. In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements under Part C do not change. As noted in the EPA's 2013 guidance, we find that there is not new visibility obligation triggered under Section 110(a)(2)(J) when a new NAAQS becomes effective. There are thus no new applicable visibility protection obligations under Section 110(a)(2)(J) resulting from 2012 PM_{2.5} NAAQS revision and the EPA, therefore, is not acting on the visibility aspect of Element J.

Element K: Air Quality Modeling/Data: Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request. This element of the submittals is common to New York infrastructure submittals that the EPA has previously approved and, as discussed in Section VII, the EPA is not repeating the rationale for proposing to approve this element of the submittals.¹³ The reader is referred to the EPA's analysis evaluation of the SIP submittals identified in Section VII.

¹³ Due to State revisions to 6 NYCRR 201-6, section 201-6.5(a)(7) in the EPA-approved NY Title V program is now numbered in the State's regulation as 6 NYCRR 201-6.4(a)(7).

Element L: Permitting Fees: Section 110(a)(2)(L) requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's operating permit program. This element of the submittals is common to New York infrastructure submittals that the EPA has previously approved and, as discussed in Section VII, the EPA is not repeating the rationale for proposing to approve this element of the submittals.

Element M: Consultation/Participation by Affected Local Entities: Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. This element of the submittals is common to New York infrastructure submittals that the EPA has previously approved and therefore the EPA is not repeating the rationale for proposing to approve this element of the submittals. The EPA notes that the submittals provide more detailed information regarding NYSDEC's authority to provide for consultation and participation in SIP development, in further support of the EPA's proposed approval of this element. The submittals identify the SIP Task Force, consisting of officials from 37 local governments and designated organizations of elected officials, as allowing for consultation by local political subdivisions affected by the SIP and the submittals for the 2010 SO₂ NAAQS and 2008 Ozone NAAQS also cite the Inter-agency Consultation Group, established pursuant to 6 NYCRR Part 240, and the State Environmental Quality Review process, 6 NYCRR Part 617.

VIII. What action is the EPA taking?

The EPA is proposing to approve New York's submittals as meeting the infrastructure requirements for the 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (C) [enforcement measures and PSD program for major sources for 2012 PM_{2.5} only], (D)(i)(II) prong 3 [for 2012 PM_{2.5} only], (D)(i)(II) prong 4 [for 2010 SO₂ and 2012 PM_{2.5} only], D(ii), (E), (F), (G), (H), (J) [for consultation, public notification and prevention of significant deterioration 2012 PM_{2.5} only], (K), (L) and (M).

The EPA is not acting on New York's submittal for 2012 PM_{2.5} as it relates to nonattainment provisions, the NSR program required by part D, in section 110(a)(2)(C) and is not acting on New York's submittals for 2008 Ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS as they relate to the measures for attainment required by section 110(a)(2)(I), as part of this proposed approval because the State's infrastructure SIP submittals do not include nonattainment requirements and the EPA will act on them when, if necessary, they are submitted.

The EPA is also not acting on 110(a)(2)(D)(i)(I) provisions (prongs 1 and 2) for the 2010 SO₂ NAAQS and the 2012 PM_{2.5} NAAQS, which will be addressed in a subsequent action by the EPA.

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 to the EPA Regional Office listed in the ADDRESSES section of this Federal Register, or by submitting comments electronically,

by mail, or through hand delivery or courier following the directions in the ADDRESSES section of this Federal Register.

IX. 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, the 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) 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 (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).

This proposed rulemaking pertaining to New York's section 110(a)(2) infrastructure requirements for the 2008 Ozone NAAQS, 2012 PM_{2.5} NAAQS, and 2010 SO₂ NAAQS 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 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, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 28, 2019.

Peter D. Lopez,
Regional Administrator,
Region 2.

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