



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2019-0157, FRL-9993-68-Region 2]

### Approval of Air Quality Implementation Plans; New York; Cross-State Air Pollution Rule; NO<sub>x</sub> Ozone Season Group 2, NO<sub>x</sub> Annual and SO<sub>2</sub> Group 1 Trading Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) addressing requirements of the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR, large electricity generating units in New York are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR federal trading programs for ozone season emissions of nitrogen oxides (NO<sub>x</sub>), annual emissions of NO<sub>x</sub>, and annual emissions of sulfur dioxide (SO<sub>2</sub>). This action proposes to approve into New York's SIP the State's regulations that replace the default allowance allocation provisions of the CSAPR federal trading programs for ozone season NO<sub>x</sub>, annual NO<sub>x</sub>, and annual SO<sub>2</sub> emissions.

**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-2019-0157**, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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:** Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3702, or by email at [fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:** The EPA proposes to approve New York's November 30, 2018 SIP submittal concerning CSAPR<sup>1</sup> trading programs for ozone-season emissions of NO<sub>x</sub>, annual emissions of NO<sub>x</sub>, and annual emissions of SO<sub>2</sub>. The EPA also proposes to approve New York's revised list of definitions that was submitted to the EPA on July 23, 2015. We have published a direct final rule approving the State's SIP revision(s) in the Rules and Regulations section of this Federal Register, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse

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<sup>1</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the ADDRESSES section of this document.

Large Electric Generating Units (EGUs) in New York are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, the federal CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace certain provisions of the CSAPR FIPs while the remaining FIP provisions continue to apply. This type of CSAPR SIP is termed an abbreviated SIP.

The New York State Department of Environmental Conservation (DEC) amended portions of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) in order to incorporate CSAPR requirements into the State's rules and allow the DEC to allocate CSAPR allowances to regulated entities in New York. 6 NYCRR Part 243, "Transport Rule NO<sub>x</sub> Ozone Season Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program." 6 NYCRR Part 244, "Transport Rule NO<sub>x</sub> Annual Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 244, "CSAPR NO<sub>x</sub> Annual Trading Program." 6 NYCRR Part 245, "Transport Rule SO<sub>2</sub> Group 1 Trading Program," has also been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 245, "CSAPR SO<sub>2</sub> Group 1 Trading Program." Attendant revisions were made to 6 NYCRR Part 200, "General Provisions," to update the list of referenced materials at Subpart 200.9 that are cited in the amended New York regulations.

The EPA is proposing to approve into the New York SIP the revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 submission.

The EPA is also proposing to repeal from the SIP previous versions of 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 which implemented New York's discontinued CAIR program. New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced CAIR trading program rules with CSAPR trading rules on November 10, 2015. Subsequently, on November 11, 2018, New York adopted amendments to 6 NYCRR Part 243, 6 NYCRR Part 244, and 6 NYCRR Part 245 that repealed and replaced the November 15, 2015 adopted rules that implemented New York's CSAPR program with new versions of New York's CSAPR trading program rules. The rules that are proposed to be repealed from the SIP are 6 NYCRR Part 243, "CAIR NO<sub>x</sub> Ozone Season Trading Program," 6 NYCRR Part 244, "CAIR NO<sub>x</sub> Annual Trading Program," and 6 NYCRR Part 245, "CAIR SO<sub>2</sub> Trading Program."

The EPA is also proposing to approve into the New York SIP a revised version of 6 NYCRR Part 200 (Subpart 200.1) to address updated definitions at Part 200.1(f) that were submitted to the EPA on July 23, 2015 and that were associated with a repeal of 6 NYCRR Part 203, "Indirect Sources of Air Contamination."

The revised versions of 6 NYCRR Parts 200 (Subpart 200.9), 243, 244, and 245 included in the November 30, 2018 SIP submission replace the previous versions of those rules that were included in a December 1, 2015 SIP submission. The EPA identified deficiencies in the December 1, 2015 submission but on November 20, 2017 conditionally approved those previous versions of Parts 200, 244, and 245 (but not Part 243) into the SIP (82 FR 57362, December 5, 2017). In a July 6, 2017 letter to the EPA, New York committed to submitting a SIP revision that addressed the identified deficiencies by December 29, 2017. However, New York's response to the conditional approval was not submitted to the EPA by December 29, 2017. The November 30, 2018 SIP submittal addresses the identified

deficiencies, but was submitted approximately 11 months late, so the conditional approval is treated as a disapproval.

The EPA did not take action on the previous version of 6 NYCRR Part 243 included in New York's December 1, 2015 submission. Following that submission, the EPA finalized the CSAPR Update rule<sup>2</sup> to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Among other things, starting in 2017 the CSAPR Update required New York EGUs to participate in the new CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program instead of the earlier CSAPR NO<sub>x</sub> Ozone Season Trading Program (now renamed the "Group 1" program) and replaced the ozone season budget for New York with a lower budget developed to address the revised and more stringent 2008 Ozone NAAQS. In a July 14, 2016 letter to the EPA, New York indicated that the State would revise 6 NYCRR Part 243 to conform with the final CSAPR Update. As indicated earlier in this section New York repealed 6 NYCRR Part 243 and replaced the rule in its entirety with a new rule, 6 NYCRR Part 243, "CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program".

This action proposes to approve into New York's SIP state-determined allowance allocation procedures for ozone-season NO<sub>x</sub> allowances that would replace EPA's default allocation procedures for the control periods in 2021 and beyond. Additionally, EPA is proposing to approve into New York's SIP state-determined allowance allocation procedures for annual NO<sub>x</sub> and SO<sub>2</sub> allowances that would replace EPA's default allocation procedures for the control periods in 2023 and beyond. The proposed approval of this SIP revision does not alter any provision, other than the allowance allocation provisions, of either the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, the CSAPR NO<sub>x</sub> Annual Trading Program or the CSAPR SO<sub>2</sub> Group 1 Trading Program as applied to New York units. The FIP provisions requiring those units to participate in the programs (as modified by this SIP revision) remain in place.

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<sup>2</sup> 81 FR 74504 (October 26, 2016).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 2, 2019.

Peter D. Lopez,  
Regional Administrator,  
Region 2.

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