



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0684; FRL-10007-95-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 in the New York Metropolitan Area Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of New York for purposes of implementing Reasonably Available Control Technology (RACT) in the New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT nonattainment area (New York Metropolitan Area or NYMA) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) as it relates to major sources emitting oxides of nitrogen (NO_x), control technique guidelines (CTG) for sources of volatile organic compounds (VOCs), and non-CTG for major sources of VOCs. In addition, the EPA is approving portions of the SIP revision submitted by New York to address the 2008 ozone NAAQS that certify that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program, an emissions statement program, and a nonattainment new source review program. The EPA is also approving New York's RACT plan as it applies to the CTG for industrial cleaning solvents and to solvent metal cleaning processes. This action is being taken in accordance with the requirements of the Clean Air Act.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2018-0684. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866, at (212) 637-3347, or by email at Hammad.Omar@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

On February 13, 2020 (85 FR 8233), the EPA published a Notice of Proposed Rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on November 13, 2017 for purposes of implementing Reasonably Available Control Technology (RACT)¹ for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) for the New York portion of the NYMA classified as moderate nonattainment. The State's November 2017 SIP submittal 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 8-hour ozone standard. The EPA proposed to approve New York's November 2017 RACT SIP submittal as it applies to non-control technique guideline (non-CTG) major sources of VOCs, CTG sources of VOCs and to major sources of NO_x.

The EPA also proposed to approve the following New York certifications that were submitted as part of SIP revisions to address the moderate area 2008 8-hour NAAQS. The certifications, that are applicable state-wide and therefore to the New York portion of NYMA, are: (1) that nonattainment new source review (NNSR) applies to NO_x and VOC emissions from stationary sources; (2) that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program; and (3) that the State has satisfied the requirements for an emissions statement program.

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).

New York certified that there are no sources located in the State for the following six CTGs: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. The EPA did not propose any action on this certification since we previously approved the State's negative declaration for these six CTGs. 82 FR 58342 (December 12, 2017); 40 CFR 52.1683 (a) and (b).

The EPA proposed to approve New York's RACT plan as it applies to the CTG for industrial cleaning solvents. On December 12, 2017 (82 FR 58342), the EPA published a conditional approval of New York's state-wide RACT submittal, dated December 22, 2014, as supplemented on September 6, 2017, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement as it applies to CTG requirements for VOC sources for industrial cleaning solvents. In its letter dated September 6, 2017, New York committed to adopt, by November 30, 2018, a revised Part 226 of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), entitled, "Solvent Metal Cleaning Processes," which addresses the CTG for industrial cleaning solvents. In the conditional approval, EPA stated that if New York failed to meet its commitment within the one-year time period specified by CAA section 110(k)(4), the conditional approval will, by operation of law, become a disapproval. New York's response to the conditional approval was submitted to the EPA on November 5, 2019, approximately 11 months later than the State's commitment included in its September 6, 2017, letter to the EPA, so the conditional approval converted to a disapproval. The EPA then proposed to approve New York's state-wide RACT

submittal dated December 22, 2014, as supplemented on September 6, 2017, and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement, as it applies to CTG requirements for VOC sources for industrial cleaning solvents.

The EPA also proposed to approve New York's RACT plan as it applies to solvent cleaning processes. The EPA approved New York's RACT plan for solvent metal cleaning processes under the 1-hour ozone standard and proposed to approve New York's revised and more stringent requirements as the RACT plan for solvent metal cleaning processes for the 2008 8-hour ozone standard.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's February 13, 2020, proposed rulemaking (85 FR 8233).

II. What comments were received in response to the EPA's proposed action?

EPA did not receive any comments on the February 13, 2020, proposed approval of New York's RACT for the 2008 8-hour ozone National Ambient Air Quality Standards in the New York Metropolitan Moderate nonattainment area.

III. What action is the EPA taking?

The EPA is approving New York's state-wide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017, and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement for the New York portion of the NYMA, as it applies to CTG requirements for sources of VOC, including industrial cleaning solvents. The EPA is approving the revisions to 6 NYCRR Part 226, "Solvent Cleaning Processes and Industrial Cleaning Solvents," with a State effective date of November 1, 2019.

The EPA is approving New York's November 13, 2017, SIP submittal as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, other than the 2016 oil and natural gas CTG, and to major sources of NOx.

The EPA is also approving New York's state-wide certifications applicable to the New York portion of NYMA moderate nonattainment area for: (1) nonattainment new source review; (2) vehicle I/M program; and (3) emission statements.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the 6 NYCRR Part 226, "Solvent Cleaning Processes and Industrial Cleaning Solvents," regulation described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at

the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

² 62 Fed. Reg. 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 19, 2020

Peter Lopez,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart HH—New York

2. In §52.1670:

- a. In the table in paragraph (c), revise the entry “Title 6, Part 226”.
- b. In the table in paragraph (e), add the entries “2008 8-hour Ozone RACT Analysis and Certification”, “2008 8-hour Ozone Specific Nonattainment New Source Review Requirements Certification”, “2008 8-hour Ozone Nonattainment Emission Statement Program Certification”, and “2008 8-hour Ozone Nonattainment Motor Vehicle Enhanced Inspection and Maintenance (I/M) Program Certification” in alphabetical order at the end of the table.

The revision and additions read as follows:

§52.1670 Identification of plan.

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(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|-----------------------|----------------------|-----------------------------|--------------------------|-----------------|
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|----------------------|--|-----------|---|--|
| Title 6, Part 226 | Solvent Cleaning Processes and Industrial Cleaning Solvents | 11/1/2019 | [insert date of publication in the Federal Register] | |
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(e) * * *

**EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-
REGULATORY PROVISION**

| Action/SIP element | Applicable geographic or nonattainment area | New York submittal date | EPA approval date | Explanation |
|-------------------------------|--|--|------------------------------|--------------------|
| * * * * * | | | | |

| | | | | |
|---|--|--|---|---|
| 2008 8-hour Ozone RACT Analysis and Certification | Statewide and to the New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area | 11/13/2017 as supplemented on 11/05/2019 | [insert date of publication in the Federal Register], [insert Federal Register citation] | <ul style="list-style-type: none"> • Full approval. • Addresses the 12/22/2014 conditional approval as it applies to CTG for VOC major sources. • Certifies New York has met the RACT requirements as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, other than the 2016 oil and natural gas CTG, and to major sources of NOx for the Moderate 2008 8-hour Ozone New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area. |
| 2008 8-hour Ozone Specific Nonattainment New Source Review Requirements Certification | New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area | 11/13/2017 | [insert date of publication in the Federal Register], [insert Federal Register citation] | <ul style="list-style-type: none"> • Full approval. |
| 2008 8-hour Ozone Nonattainment Emission Statement Program Certification | New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area | 11/13/2017 | [insert date of publication in the Federal Register], [insert Federal Register citation] | <ul style="list-style-type: none"> • Full approval. |

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|---|---|------------|---|------------------|
| 2008 8-hour Ozone Nonattainment Motor Vehicle Enhanced Inspection and Maintenance (I/M) Program Certification | New York portion of the New York- Northern New Jersey-Long Island NY-NJ- CT 8-hour ozone nonattainment area | 11/13/2017 | [insert date of publication in the Federal Register], [insert Federal Register citation] | • Full approval. |
|---|---|------------|---|------------------|

[FR Doc. 2020-08860 Filed: 5/12/2020 8:45 am; Publication Date: 5/13/2020]