



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R02-OAR-2018-0647; FRL-10011-41-Region 2]**

**Approval of Air Quality Implementation Plans; New York; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> NAAQS; Interstate Transport Provisions**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of the New York State Implementation Plan (SIP) submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2012 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) or standard.

**DATES:** This final rule is effective **[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-2018-0647 at <http://www.regulations.gov>. 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:** Kenneth Fradkin, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866, at (212) 637-3702, or by email at [fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov).

## **I. What is the background for this action?**

Under section 110(a)(1) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of a revised primary or secondary National Ambient Air Quality Standards (NAAQS or standard) within three years after the EPA promulgates a new or revised NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” CAA section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy.

On April 30, 2020 (84 FR 23938), the EPA published a Notice of Proposed Rulemaking (NPR) that proposed to approve elements of the 2012 PM<sub>2.5</sub> infrastructure SIP submission from the State of New York, received on November 30, 2016. Specifically, the EPA proposed to approve the portion of the submission addressing the interstate transport provisions for the 2012 PM<sub>2.5</sub> NAAQS under CAA section 110(a)(2)(D)(i)(I), otherwise known as the “good neighbor” provision.

Other detailed information relevant to this action on New York’s infrastructure SIP submission, including infrastructure requirements concerning interstate transport provisions and the rationale for EPA’s approval, is included in the NPR and the associated Technical Support Document (TSD), available in the docket, and is not restated here.

## **II. What comments were received in response to the EPA’s proposed action?**

The EPA did not receive any comments on the April 30, 2020 proposed approval of New York’s infrastructure SIP submission, dated November 30, 2016, addressing the interstate transport provisions for the 2012 PM<sub>2.5</sub> NAAQS.

## **III. What action is EPA taking?**

The EPA is approving the portions of New York’s November 30, 2016 SIP submittal

addressing interstate transport for the 2012 annual PM<sub>2.5</sub> NAAQS as meeting the requirements in section 110(a)(2)(D)(i)(I) of the CAA.

#### **IV. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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.*);
- 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 this action does not involve technical standards; 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 final rule, addressing New York's interstate transport requirements for the 2012 annual PM<sub>2.5</sub> NAAQS, is not approved to apply on any Indian reservation land or in any other area where the 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 30, 2020.

Peter Lopez,  
Regional Administrator,  
Region 2.

For the reasons stated in the preamble, EPA amends Part 52 chapter I, title 40 of the Code of Federal Regulations 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, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS, Interstate Transport Provisions” at the end of the table to read as follows:

**§52.1670 Identification of plan.**

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(e) \* \* \*

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

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2012 PM <sub>2.5</sub> NAAQS, Interstate Transport Provisions	Statewide	11/30/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I) prongs 1 and 2.