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<AGENCY TYPE='S'>ENVIRONMENTAL PROTECTION AGENCY

<CFR>40 CFR Part 52

<DEPDOC>[EPA-R02-OAR-2022-0321, FRL-10144-01-R2]

<SUBJECT>Approval and Promulgation of Implementation Plans; New York;
Particulate Matter Control Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution by particulate matter (PM). The proposed SIP revisions consist of amendments to existing regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for sources of PM. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before **October 20, 2022**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2022-0321 at <https://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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION:

The **Supplementary Information** section is arranged as follows: <EXTRACT>

- I. What action is the EPA proposing?
- II. What is the background for this proposed rulemaking?
- III. What did New York submit?
- IV. What is the EPA's evaluation of Subpart 227-1, "Stationary Combustion Installations"?
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 - B. What are the new requirements of Subpart 227-1?
 - C. What is the EPA's evaluation?
- V. What other revisions did New York make?
- VI. What is the EPA's conclusion?

VII. Incorporation by Reference

VIII. Statutory and Executive Order Reviews </EXTRACT>

I. What action is the EPA proposing?

The EPA is proposing to approve revisions to the New York SIP submitted by the State of New York on March 26, 2021. This SIP revision includes revisions to an existing regulation, Title 6 of the New York Code of Rules and Regulations (NYCRR) Subpart 227-1, “Stationary Combustion Installations,” which establishes PM emission standards for existing and new stationary combustion installations. The attendant revisions to 6 NYCRR Part 200, “General Provisions,” section 200.9, “Referenced material,” Table 1, for 6 NYCRR Subpart 227-1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

These revisions include additional control strategies that will reduce PM emissions from major sources throughout the State. The EPA is proposing to approve New York’s SIP submittals, which applies to major sources of PM, as a SIP-strengthening measure for New York’s PM SIP.

II. What is the background for this proposed rulemaking?

Particulate Matter (PM) NAAQS Revisions

On September 21, 2006, the EPA retained the primary and secondary 24-hour PM₁₀ standard of 150 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987. *See* 71 FR 61144 (October 17, 2006); *see also* 52 FR 24634 (July 1, 1987).

On October 17, 2006, the EPA strengthened the primary and secondary 24-hour PM_{2.5} NAAQS to 35 $\mu\text{g}/\text{m}^3$. *See* 71 FR 61144. On November 13, 2009, the EPA promulgated designations for the revised 24-hour PM_{2.5} standard set in 2006, designating the NY-NJ-CT area as “nonattainment.” *See* 74 FR 58688. On June 27, 2013, New York submitted a request to redesignate the New York portion of the NY-NJ-CT nonattainment

area, NYMA, from “nonattainment” to “attainment.” As part of this request, New York also submitted a maintenance plan to ensure that New York's portion of the NYMA would continue attainment through 2025. On April 18, 2014, the EPA took final action to approve New York's SIP revision to redesignate the New York portion of the NYMA to “attainment” for the 2006 24-hour PM_{2.5} NAAQS. *See* 79 FR 21857.

On December 14, 2012, the EPA promulgated a revised primary NAAQS for PM_{2.5} for the annual standard, setting the level at 12 micrograms per cubic meter (µg/m³) calculated as an annual average, which is averaged over a three-year period. *See* 78 FR 3086.

On January 15, 2015, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the revised primary PM_{2.5} NAAQS and on April 15, 2015, the designations became effective. *See* 80 FR 2206. The NYMA was designated by the EPA as an “Unclassifiable/Attainment” area for the revised primary PM_{2.5} NAAQS. *See id.*

III. What did New York submit?

On March 26, 2021, the New York State Department of Environmental Conservation (NYSDEC or New York) submitted to the EPA proposed revisions to the SIP, which included State adopted revisions to Subpart 227-1, “Stationary Combustion Installations,” with an effective date of February 25, 2021. In this submittal, New York also made attendant revisions to Part 200, Section 200.9, “General Provisions, Referenced material.” These revisions include additional control strategies that will reduce PM_{2.5} emissions statewide and provide support for New York State to maintain its attainment of the PM NAAQS.

IV. What is EPA’s evaluation of Subpart 227-1, “Stationary Combustion Installations”?

A. Background

NYSDEC has repealed and replaced 6 NYCRR Subpart 227-1, “Stationary Combustion Installations,” to impose more stringent PM emission limits for existing and new stationary combustion installations that either precede, or are not subject to, a federal New Source Performance Standard (NSPS) and/or National Emissions Standard for Hazardous Air Pollutants (NESHAP). The revisions to Subpart 227-1 contain PM emission limits for oil and solid fuel fired stationary installations and establishes an opacity limit for all stationary combustion installations. New York has also revised Subpart 227-1 to correct minor typographical errors and to incorporate changes into the air permitting regulations that have occurred over the past 20 years. The purpose of this revision is to further reduce the emissions of the precursors of PM_{2.5}, which will help New York State maintain its attainment of the PM NAAQS.

B. What are the new requirements of Subpart 227-1?

The Subpart 227-1 revisions include the definitions applied to this Subpart, a change in the applicability and prohibitions regarding stationary combustion installations, a change in PM emission limits for new and existing stationary combustion installations, the establishment of an opacity limit for all stationary combustion installations, and revisions to compliance testing, monitoring, and recordkeeping provisions.

Section 227-1.2 was revised to incorporate the applicability and prohibitions outlined in Subpart 227-1. The revised Subpart 227-1 will apply to stationary combustion installations except for those that are already subject to the NSPS under 40 CFR Part 60 and/or NESHAP under 40 CFR Part 63. The PM standards outlined within the NSPS and NESHAP both meet and exceed the PM emission limits established within New York’s revised Subpart 227-1. This revision is also modified to prohibit owner or operators to construct, install, modify, or cause to be constructed, installed, or modified, any hand-fed stationary combustion installation designed to fire bituminous coal.

Section 227-1.3 was revised to incorporate PM emission limits for stationary

combustion installations. The emission limits outlined within this subpart apply to stationary combustion installations with a maximum heat input capacity equal or exceeding: (1) one million BTU per hour firing any amount of solid fuel or (2) 50 million BTU per hour firing oil or oil in combination with other liquid or gaseous fuels. Upon promulgation of Subpart 227-1, owners or operators of existing stationary combustion installations that fire oil or oil in combination with other liquid or gaseous fuels shall not emit PM in excess of 0.10 pounds per million BTU (lb/MMBTU) heat input. Within four years of the promulgation of Subpart 227-1, owners or operators of existing stationary combustion installations firing solid fuel shall not emit PM in excess of 0.10 lb/MMBTU heat input. NYSDEC has chosen the increased compliance period of four years for existing stationary combustion installations firing solid fuel, to accommodate owners or operators of the affected facilities by providing time to implement retrofits of controls equipment. Upon promulgation of Subpart 227-1, owners or operators of any new stationary combustion installation shall not be allowed to emit PM in excess of 0.10 lb/MMBTU heat input. Section 227-1.3 is revised to require all stationary combustion installations subject to the requirements of Subpart 227-1 to perform an annual tune-up. Section 227-1.3 is also revised to provide clarity of applicability for stationary combustion installations connected to a common air cleaning device and/or stack.

Section 227-1.4 was revised to establish the opacity limits that owners or operator of new and existing stationary combustion installations must comply with. No owner or operator shall operate a stationary combustion installation that exhibits greater than 20% opacity (six-minute average), except for one six-minute period per hour of not more than 27% opacity. Section 227-1.4 was also revised to outline how compliance of the opacity limits for the units may be determined.

Section 227-1.5 was revised to incorporate the compliance testing, monitoring, and recordkeeping provisions for stationary combustion installations applicable to

Subpart 227-1. This revision requires owners or operators of new and existing solid fuel fired stationary combustion installations to follow a set of protocols to determine compliance with the applicable PM emission limit prescribed in section 227-1.3. Section 227-1.5 was revised to require owner or operators to install, operate, and properly maintain accurate Continuous Opacity Monitoring System (COMS) for stationary combustion installations with a total maximum heat input capacity exceeding 250 million BTU per hour. The revision also allows for owners or operators to utilize an NYSDEC approved case-by-case method for continuously monitoring and recording opacity. Section 227-1.5 also requires owners or operators that operate COMS to submit excess emissions and monitoring system performance report to NYSDEC quarterly. Section 227-1.5 is revised to require owners or operators of stationary combustion installations firing oil, or oil in combination with other liquid or gaseous fuels, with a total maximum heat input capacity of at least 50 million BTU per hour, to keep vendor certified fuel receipts which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225-1. Section 227-1.5 is also revised to detail the recordkeeping provisions that owners or operators, applicable to Subpart 227-1, must submit to the NYSDEC.

C. What is the EPA's evaluation?

The EPA agrees with New York's evaluation that the revised PM limits outlined within the revised Subpart 227-1 will lead to an estimated reduction of 2-5 tons of actual PM emission per day. A 2-5 tons per day of PM reductions could help New York State continue to maintain its attainment of the PM NAAQS. The implementation of more stringent PM emission limits will strengthen New York's PM SIP, and directly result in reductions of PM, PM_{2.5}, and PM₁₀ throughout the state.

The EPA also reviewed New Jersey and Connecticut's PM emission limits for similar sources rated at similar heat input ratings and compared those limits with the

limits adopted by NYSDEC in this rule. The EPA observed that New York’s PM limits will be more stringent than Connecticut’s for similar fuel-burning equipment.¹

The EPA has reviewed New York’s SIP submittal, which seeks to incorporate revisions to 6 NYCRR Subpart 227-1, “Stationary Combustion Installations.” After evaluating Subpart 227-1 for consistency with the Clean Air Act (CAA or the Act), EPA regulations, and EPA policy, the EPA proposes to find that the submission addresses the PM requirements found in CAA Section 175A, 42 U.S.C. Section 7505a, and proposes to approve this revision.

V. What other revisions did New York make?

New York also made administrative changes to Part 200, “General Provisions” which reflect implementation of Subpart 227-1 provisions. Specifically, the revisions to Part 200 will add new references in section 200.9, “Referenced material”, Table 1. The revisions to Table 1 include all documents referenced in New York’s amendments to Subpart 227-1. The attendant revisions to 6 NYCRR section 200, “General Provisions,” section 200.9, “Referenced material”, Table 1, for 6 NYCRR Subpart 227-1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

VI. What is the EPA’s conclusion?

The EPA evaluated New York’s submittal for consistency with the Act, EPA regulations, and EPA policy. The EPA proposes that the revisions made to 6 NYCRR Subpart 227-1, “Stationary Combustion Installations,” with the State effective date of February 25, 2021, meet the SIP requirements of the Act. The attendant revisions to 6 NYCRR section 200, “General Provisions,” section 200.9, “Referenced material”, Table 1, for 6 NYCRR Subpart 227-1 has been addressed under a separate rulemaking at 87 FR

¹ Section 22a-174-18 of Connecticut’s PM emission standards for fuel-burning equipment provides particulate matter emission limits for fuel-burning sources in pounds per million BTU (lbs/MMBTU). See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-18/.

52337, effective September 26, 2022. These revisions meet the requirement of the Act and EPA's regulations and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA's regulations.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to Title 6 of the NYCRR Subpart 227-1, "Stationary Combustion Installations," as described in section III of this preamble. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R02-OAR-2022-0321, at <http://regulations.gov>, and at the EPA Region II Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. 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. *See* 42 U.S.C. 7410(k); *see also* 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided 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), 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 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, the SIP is not proposing 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 any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

<LSTSUB><HED>List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Incorporation by Reference, Particulate matter, Reporting and recordkeeping requirements.
</SIG>

<AUTH><HED>Authority: <P>42 U.S.C. 7401 et seq.

<NAME>**Lisa Garcia,**
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Region 2.</SIG>

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