



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2023-0188; FRL-11025-02-R1]

### **Air Plan Approval; New Hampshire; Reasonable Available Control Technology for the 2008 and 2015 Ozone Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) revisions submitted by the State of New Hampshire that certify that the state has adopted regulations meeting the requirements for reasonably available control technology (RACT) for the 2008 and 2015 ozone national ambient air quality standards (NAAQS), and portions of amendments to a related regulation that New Hampshire revised to fulfill RACT requirements for these two NAAQS. We are also approving a revision to the state's definition of emergency generator. These actions are being taken in accordance with the Clean Air Act.

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

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2023-0188. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 5-MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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**I. Background and Purpose**

On July 10, 2023 (88 FR 43483), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval that the state has adopted regulations meeting the requirements for reasonably available control technology (RACT) for the 2008 and 2015 ozone national ambient air quality standards (NAAQS), amendments to Env-A 1300, NO<sub>x</sub> RACT, which New Hampshire revised as part of its RACT requirements for these two ozone NAAQS, a revision to the State's definition of emergency generator to address a court decision that vacated the allowance for such engines to operate for demand-response purposes, and removal from the SIP of two previously issued RACT orders related to Merrimack Station. During the public comment period, EPA received one comment letter from the Sierra Club dated August 9, 2023, that opposed New Hampshire's NO<sub>x</sub> RACT limits applicable to coal-fired cyclone boilers. EPA is evaluating those comments in light of our July 10, 2023 proposed approval, and will take final action on New Hampshire's NO<sub>x</sub> RACT requirements for coal-fired cyclone boilers and New Hampshire's request to withdraw from the SIP two previously issued RACT orders applicable to

Merrimack Station boilers in a subsequent final rule. We did not receive comments on any other portions of our July 10, 2023 proposed action and are therefore approving within this final rule New Hampshire's SIP revisions presented in our July 10, 2023 proposal for all provisions for which we did not receive comments. Please see our July 10, 2023 proposed rule for additional background and a more detailed explanation of EPA's rationale related to this action.

## **II. Final Action**

EPA is approving portions of SIP revisions submitted by the State of New Hampshire. Specifically, EPA is approving the VOC RACT certifications for the 2008 and 2015 ozone NAAQS; the NO<sub>x</sub> RACT certifications for these same standards except for the certification regarding NO<sub>x</sub> RACT for coal-fired cyclone boilers for which EPA received adverse comments; the state's revised NO<sub>x</sub> RACT regulation, Env-A 1300, except for sections within Env-A 1303.06 concerning limits for coal-fired cyclone boilers for which EPA received adverse comments; and the state's revised definition of emergency generator in Regulation Env-A 100.

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire regulation Env-A 1300, NO<sub>x</sub> RACT, and a revision to the state's definition of emergency generator in regulation Env-A 100, which contains the state's definition of terms used within its air pollution control regulations, as discussed in Section II of this preamble and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 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.<sup>1</sup>

#### **IV. 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);
- 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 (Pub. L. 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); and

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The New Hampshire Department of Environmental Services did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area.

Consideration of EJ is not required as part of this action, and there is no information in the record

inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2023.

David Cash,  
Regional Administrator,  
EPA Region 1.

Part 52 of 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 EE – New Hampshire**

2. In § 52.1520 (c), amend the table by adding an entry for “Env-A 100”, immediately preceding the entry for “Env-A 200”; revising the entry for “Env-A 1300”; and in § 52.1520 (e), amending the table to add entries for “Certifications for RACT for the 2008 and 2015 ozone standards” and for “Negative declarations included in New Hampshire’s State Implementation Plan for purposes of the 2008 and 2015 ozone standards” to the end of the table, to read as follows:

**§ 52.1520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-Approved New Hampshire Regulations**

| State citation | Title/subject                       | State effective date          | EPA approval date <sup>1</sup>   | Explanations   |
|----------------|-------------------------------------|-------------------------------|--|--|
| **             | *                                   | *                             | *  | **   |
| Env-A 100      | Definition of “Emergency generator” | 8/15/2018                     | <b>[Insert date of publication in the Federal Register]</b><br><br><b>[Insert Federal Register citation]</b> | Revision to the term “Emergency generator” as used within the state’s air pollution control regulations.   |
| *              | *                                   | *                             | *  | *  |
| Env-A 1300     | NOx RACT                            | 8/15/2018<br>and<br>3/20/2023 |  | Regulation, effective 8/15/2018, containing emissions limits and other requirements for stationary sources of nitrogen oxides approved except for sections pertaining to coal-fired cyclone boilers at Env-A 1303.06(b) and (c). Revisions made to Env-A 1303.02 and 1303.04. effective 3/20/2023. |
| **             | *                                   | *                             | *  | **   |

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) \* \* \*

### New Hampshire NonRegulatory

| <b>Name of nonregulatory SIP provision</b>  | <b>Applicable geographic or nonattainment area</b> | <b>State submittal date/effective date</b> | <b>EPA approved date<sup>3</sup></b>   | <b>Explanations</b>  |
|---|--|--|--|--|
| **  | *  | *  | *  | **   |
| Certifications for RACT for the 2008 and 2015 ozone standards   | Statewide  | 9/6/2018                                   | <b>[Insert date of publication in the Federal Register]</b><br><b>[Insert Federal Register citation]</b> | RACT certifications for stationary sources of VOC and NOx approved for purposes of the 2008 and 2015 ozone standards except for NOx RACT requirements pertaining to coal-fired cyclone boilers.  |
| Negative declarations included in New Hampshire's State Implementation Plan for purposes of the 2008 and 2015 ozone standards | Statewide  | 9/6/2018                                   | <b>[Insert date of publication in the Federal Register]</b><br><b>[Insert Federal Register citation]</b> | Negative declarations submitted for 26 CTG categories listed within Table 5-3 of the New Hampshire document "Certification of Reasonably Available Control Technology for the 2008 and 2015 8-hour Ozone National Ambient Air Quality Standards", dated August 21, 2018. |

<sup>3</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2023-19117 Filed: 9/5/2023 8:45 am; Publication Date: 9/6/2023]