



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA-R02-OAR-2023-0175; FRL 11053-01-R2]

Approval of Air Quality Implementation Plans; New York; Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by New York State Department of Environmental Conservation (NYSDEC) for the purpose of enhancing an existing emission statement program for stationary sources in New York State. The SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to the emission statements. This SIP revision was submitted by NYSDEC to satisfy the ozone nonattainment provision of the Clean Air Act (Act or CAA). These provisions establish electronic reporting requirements for annual emission statements filed by facilities subject to Title V operating permits of the Act beginning in 2022 (for calendar year 2021 emission reporting).

The intended effect is to obtain improved emissions related data from facilities located in New York State, allowing NYSDEC to more effectively plan for, and attain, the national ambient air quality standards (NAAQS). The Emission Statement rule also improves EPA's and the public's access to facility specific emission related data.

DATES: Written 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 No. EPA-R02-OAR-2023-0175 at <https://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 through 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://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-3382, or by email at banon.ysabel@epa.gov.

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I. Background

A. Ozone Background

Ozone is a gas that is formed by the reaction of Volatile Organic Compound (VOC) and Oxides of Nitrogen (NO_x) in the atmosphere in the presence of sunlight. Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_x referred to as ozone precursors. These precursors (VOC and NO_x) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as nonpoint sources (also called area sources).

2008 and 2015 Ozone NAAQS Revisions

In March 2008, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone to 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour Ozone Standard). *See* 73 FR 16435 (March 27, 2008). In October 2015, the EPA revised this standard to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour Ozone Standard). *See* 80 FR 65291 (October 26, 2015).

On May 21, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour Ozone Standard and, on July 20, 2012, the designations became effective. *See* 77 FR 30160 (May 21, 2012). The New York-Northern New Jersey-Long Island Connecticut metropolitan area (NYMA) was

designated by the EPA as a “marginal” nonattainment area for the 2008 ozone NAAQS.¹ In 2016, the EPA determined that the NYMA did not attain the 2008 ozone standard by the July 20, 2015, attainment date and was reclassified from a “marginal” to a “moderate” nonattainment area. *See* 81 FR 26697 (May 4, 2016). State Implementation Plans (SIPs) for “moderate” nonattainment areas were due by January 1, 2017. *See id.* On April 30, 2018, the EPA finalized its attainment/nonattainment designations for most areas across the country as to the 2015 8-hour Ozone Standard, in which the NYMA was designated by the EPA as a “moderate” nonattainment area. *See* 83 FR 25776 (June 4, 2018). On September 23, 2019, the EPA reclassified the NYMA to “serious” nonattainment as to the 2008 8-hour Ozone Standard. *See* 84 FR 44238 (August 23, 2019).

Additionally, New York is a member of the Ozone Transport Region (OTR) established by Congress in Section 184 of the Act. Pursuant to section 184(b)(2), any stationary source that emits or has the potential to emit at least 50 tons per year (tpy) of VOC shall be considered a major stationary source and subject to the requirement which should be applicable to major stationary sources if the area were classified as moderate nonattainment area. Thus, States within the OTR are subject to SIP requirements in section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of NO_x for States with moderate (or worse) ozone nonattainment areas. A major stationary source of NO_x is defined as stationary facility or source of air pollutants which directly emits or has the potential to emit 100 tpy or more of NO_x. *See* CAA section 302(j).

¹ The New York portion of the NYMA, is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. *See* 40 CFR 81.333

Therefore, the emission statement requirement is extended to include sources in attainment area within the OTR that emit, or have the potential to emit, 100 tpy or more of NO_x or 50 tpy or more of VOC.

B. Statutory and Regulatory Requirements for Emission Statement

Annual Reporting of VOC and NO_x

The air quality planning and SIP requirements for ozone nonattainment and transport areas are established in Subparts 1 and 2 of Part D of Title I of the Act, as amended in 1990. The EPA has published a “General Preamble” and “Appendices to the General Preamble.” *See* 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). These describe how the EPA intends to review SIPs submitted under Title I of the Act. EPA has also issued a draft guidance document, entitled “Guidance on the Implementation of an Emission Statement Program” (Emission Statement Guidance), dated July 1992, which describes the minimum requirements for approvable emission statement programs.

Section 182(a)(3)(B)(i) of the Act requires States in which all or part of any ozone non-attainment area is located to submit SIP revisions to EPA by November 15, 1992. The provision requires owner/operators of stationary sources of VOC and NO_x to provide the State with a statement, at least annually, of the source’s actual emissions of VOC and NO_x. Sources were to submit the first emission statements to their respective States by November 15, 1993. Pursuant to the Emission Statement Guidance, if the source emits either VOC or NO_x at or above levels for which the State Emission Statement rule requires reporting, the other pollutant (VOC or NO_x) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows States to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources located in

nonattainment areas, which emit less than 25 tpy of actual plantwide VOC or NO_x, provided the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP-42²) or other methods acceptable to EPA.

The required Emission State Program defines how air agencies obtain emissions data directly from certain facilities, and these data, along with other information, are then reported to EPA as part of SIP inventories required under the Act sections 182(a)(1) and 182(a)(3)(A). This State program is generally referred to as an emissions statement regulation, and it outlines how certain facilities must report emissions and facility activity data to an air agency, typically a State agency. Reports submitted to air agencies must be accompanied by “a certification that the information contained” in the report is “accurate to the best knowledge” of the facility.³ To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data elements that are required by EPA (requirements at 40 CFR 51.1115 and 40 CFR 51.1315).

II. Description of State’s Submittal

On March 21, 2022, NYSDEC submitted a SIP to incorporate revisions to 6 NYCRR Subpart 202-2, “Emission Statements”. The purpose of 6 NYCRR Subpart 202-2 is to establish the requirements for annual emission statements filed by facilities subject to Title V operating permits under the Act. This provision pertains to requirements for nonattainment areas for the purpose of enhancing an existing emission statement program for stationary sources in New York. On November 18, 2020, NYSDEC adopted these

² U.S. EPA. 1985. Compilation of Air Pollutants Emission Factors Volume I: Stationary Point and Area Sources. Supplement A through D. No AP-42, Research Triangle Park, NC. 888p.

³ US. EPA. 1992. Guidance of the Implementation of an Emission Statement Program, Research Triangle Park, NC. Appendix B-2.

amendments, which became State effective on December 18, 2020. On September 1, 2022, NYSDEC submitted supplemental information to EPA regarding these revisions.

The requirements for emission statements are set forth in EPA's Air Emissions Reporting Requirements rule (AERR). *See* 40 CFR 51 Subpart A. In order to implement the emissions statement requirements referenced above, NYSDEC adopted 6 NYCRR Subpart 202-2 on July 15, 1994. NYSDEC subsequently revised the provision on April 29, 2005. From 1993 through 2010, NYSDEC required paper submissions of emission statements. Since 2011 (for calendar year 2010 emissions reporting), however, facilities have also had the option of submitting emission statements via electronically through NYSDEC's Air Compliance and Emissions (ACE) Electronic Reporting Tool.

Additional revisions were submitted by NYSDEC in 2007 when the EPA approved the Emission Statement SIP revision that enhances the reporting requirements for VOC and NO_x and expands the reporting requirement, based on specified emission thresholds, to include CO, SO₂, particulate matter measuring 2.5 microns or less (PM_{2.5}), particulate matter measuring 10 microns or less (PM₁₀), ammonia (NH₃), lead (Pb) and lead compounds and hazardous air pollutants (HAPs). *See* FR 61528, (October 31, 2007). Additionally, the revision improves EPA's and the public's access to facility specific emissions related data.

In NYSDEC's March 21, 2022, submittal, the State is proposing revisions to Subpart 202-2 to require electronic submittal of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Act. It is expected that electronic reporting will be beneficial for both Title V facilities, in the long term, and NYSDEC. These benefits include reduced costs, processing time, and improved accuracy and file management.

The State seeks to make two changes to Section 202-2.1 ("Applicability"). First, a new subdivision 202-2.1(c) mandates the electronic submittal of emission statements.

The new requirement will be included as an enforceable condition in new or renewed Title V operating permits issued after January 1, 2021. Second, by reporting year 2025, all emission statements will be subject to the electronic submittal requirement.

The State made changes to Section 202-2.3 (“Required contents of an emission statement:”) First, the first sentence of paragraph 202-2.3(a)(1) has been revised to read: “(A) responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information.” Second, subparagraph 202-2.3(a)(3)(ix) was modified to require that the sum of the percent operation by season reported in emission statements must equal 100. Third, subparagraph 202-2.3(a)(3)(xii) was modified to State that reporting of emissions for processes with source classification codes beginning with a 1 or a 2 is optional. If the facilities don’t report emissions for these processes, NYSDEC will calculate process-level emissions based upon the process-level fuel use reported by a facility. Fourth, subdivision 202-2.3(d) has been edited to State that facilities with Title V operating permits will receive emission statement survey forms provided by the State. Fifth, subdivision 202-2.3(e) was revised to require that facilities report emissions of SO₂, primary PM_{2.5}, and primary PM₁₀ for exempt sources during periodic inventory years in addition to the pollutants listed in the current version of the rule.

The State also made changes to Section 202-2.4, (“Procedures:”). First, Subdivision 202-2.4(a) was repealed and replaced. Second, new paragraph 202-2.4(a)(1) and 202-2.4(a)(2) will maintain the current April 15 deadline for submitting emissions statements until such time that a facility is subject to the electronic reporting requirement. Third, new paragraph 202-2.4(a)(3) establishes the following deadlines for submitting emission statements under the new electronic submittal requirement: a) March 15 of each year for facilities with three (3) or fewer processes listed in their Title V permit; b) March 31 of each year for facilities with four (4) to six (6) processes listed in their Title V

permit; c) April 15 of each year for facilities with seven (7) to twelve (12) processes listed in their Title V permit; or d) April 30 of each year for facilities with thirteen (13) or more processes listed in their Title V operating permit. Fourth, new paragraph 202-2.4(d) sets forth situations in which emission statements may be submitted via courier instead of electronic submittal: a) when data cannot be labeled as confidential business information using the State's electronic interface in accordance with 6 NYCRR Part 616; or b) a facility receives permission from the State after demonstrating a need to submit via courier due to a failure of the electronic reporting interface. Fifth, subdivisions 202-2.4(b) and 202-2.4(c) were modified to account for the change in the due date for submitting emission statements from April 15 of each year to the dates provided in paragraph 202-2.4(a)(3).

III. Evaluation of State's Submittals

EPA reviewed NYSDEC's March 21, 2022, proposed SIP revision to update Title 6 NYCRR part 202-2 "Emission Statement." NYSDEC's SIP revision meets the minimum requirement outlined on the Emission Statement Guidance, Section 4, XX00.050 page 43-45.

IV. Proposed Action

Based on the EPA's review, the Emission Statement rule contains the necessary applicability, compliance, enforcement, and reporting requirements for an approvable emission statement program. The EPA is proposing to approve the revisions to 6 NYCRR Part 202, Subpart 202-2, "Emission Statements," with a State effective date of December 18, 2020, as part of New York's SIP. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this document, EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to 6 NYCRR Subpart 202-2, “Emission Statement,” as described in Section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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) application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not proposing 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 it 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, February 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. The 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.” The 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 NYSDEC 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. The EPA did not perform an EJ analysis and did not consider EJ in this action. 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 EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

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

Lisa Garcia,
Regional Administrator,
Region 2.

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