



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2025-0290; FRL-12965-02-R2]

Approval of Source-Specific Air Quality Implementation Plan; New York; Calpine JFK Energy Center

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is approving a revision to the State of New York's State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standard (NAAQS) related to a source-specific SIP (SSSIP) revision for Calpine JFK Energy Center, located at Kennedy International Airport (JFK), Building 49, Jamaica, NY 11430 (the Facility). The EPA found that the control options in this SSSIP revision implement Reasonably Available Control Technology (RACT) with respect to Oxides of Nitrogen (NO_x) emissions from the relevant Facility sources, which are identified as six mid-size emergency hot water boilers (the Boilers). This SSSIP revision implements NO_x RACT for the relevant Facility sources in accordance with the requirements for implementation of the 2008 and 2015 ozone NAAQS. The EPA determined that this action will not interfere with ozone NAAQS requirements and meets all applicable requirements of the Clean Air Act (CAA).

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-2025-0290. 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, e.g., Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 <https://www.regulations.gov>.

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I. What is the background for this action?

On November 17, 2025 (90 FR 51263), the EPA published a notice of proposed rulemaking for the SSSIP revision submitted by the State of New York on June 9, 2023 proposing to determine that the emission limit of 0.15 lb/MMBtu per hour for each of the Facility's Boilers when firing natural gas, and 0.25 lb/MMBtu per hour when firing distillate oil (emissions not to exceed 24 tpy on a rolling 12-month basis) implements RACT. The 6 New York Codes, Rules and Regulations (NYCRR) subpart 227-2 presumptive NO_x limit for the Boilers of 0.08 lbs/MMBtu is not economically and technologically feasible for this source, and no additional control technologies beyond what are currently used at the Boilers are technically and economically feasible. The emission limit also has associated monitoring and reporting requirements. The State's June 9, 2023 SIP submittal consists of the SSSIP Revision for the Facility, the NO_x RACT evaluation from January 2022, and the public notice in the Environmental Notice Bulletin on March 22, 2023.

The Facility supplies electricity to JFK and the Consolidated Edison Power Distribution Grid. The Facility also supplies steam to JFK's central heating and refrigeration plant. The

Facility's Boilers are used intermittently to supplement hot water generation at the airport when the combustion turbine-based cogeneration units are unavailable or cannot meet demand.

The New York State Department of Environmental Conservation (NYSDEC) RACT regulations establish RACT requirements for this category of sources in 6 NYCRR subpart 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO_x)," last approved into New York's SIP by the EPA on July 12, 2013 (78 FR 41846). However, the NYSDEC RACT regulations allow source-specific RACT determinations (or variances) if the presumptive RACT requirements are not technologically or economically feasible; such source-specific determinations must be submitted to the EPA as a SSSIP. *See* 6 NYCRR subpart 227-2.5(c).

This SSSIP was submitted to EPA by NYSDEC on June 9, 2023. The EPA has reviewed the RACT determination in this SSSIP submittal for consistency with the CAA and EPA regulations, as interpreted through EPA actions and guidance. The intended effect of this source-specific SIP revision is to establish an emission limit for the process specific control measure for the Boilers.

The EPA is determining through this approval action that the NO_x RACT emission limit for the Boilers submitted by the State in this SSSIP submittal is the lowest emission limit with the application of control technology that is reasonably available given technological and economic feasibility considerations. The NO_x RACT emission limit is contained in the Facility's air permit, Title V operating permit, 2-6308-00096/00009 under conditions 56, 57, 58, emission unit B-OILRS issued by the State on June 28, 2022, and expires on June 27, 2027. EPA is approving the incorporation of permit conditions 56, 57, and 58 into the SIP. These conditions include monitoring, reporting, and recordkeeping requirements for the Boilers further described in the EPA RACT analysis below.

The Facility submitted a RACT demonstration, dated January 2022, to NYSDEC for the emission limit requirements, and NYSDEC reviewed and approved the emission limit as

adequately implementing RACT for the source. NYSDEC then submitted the source-specific SIP revision package at issue in this action for the EPA approval. In this action, the EPA is determining the emission limit implements RACT for this source. The RACT variance emission limit for the Facility becomes part of the federally enforceable SIP upon the EPA's final approval of this SSSIP.

The EPA has determined that the emission limit of 0.15 lb/MMBtu per hour for each of the Boilers when firing natural gas, and 0.25 lb/MMBtu per hour when firing distillate oil (emissions not to exceed 24 tpy on a rolling 12-month basis) implements RACT because: (1) the 6 NYCRR subpart 227-2 presumptive NO_x limit for the Boilers of 0.08 lbs/MMBtu is not economically and technologically feasible for this source; (2) no additional control technologies beyond what are currently used at the Boilers are technically and economically feasible; and (3) the SIP revision contains monitoring and reporting requirements.

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 November 17, 2025 proposed rulemaking (90 FR 51263). Within this final rulemaking, the EPA is approving conditions 56, 57, and 58 from Permit ID No. 2-6308-00096/00009 for incorporation by reference into New York's SIP.

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

The EPA provided a 30-day review and comment period for the November 17, 2025 proposed rule (90 FR 51263). The comment period ended on December 17, 2025. During the 30-day public comment period, the EPA received four comments in response to the EPA's November 17, 2025 proposed rulemaking on New York's SIP revision submittal (90 FR 51263). After reviewing the comments, the EPA has determined that one commenter provided feedback that is outside the scope of our proposed rule or fails to identify any material issue necessitating a response. More specifically, this comment did not raise issues relevant to the EPA's proposed

rule, and, therefore, the EPA will not provide a specific response to this comment. The EPA received comments from three commenters that are relevant and significant to the EPA's proposed rule, warranting a response from the EPA. The relevant comments are summarized below and followed by an EPA response. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2025-0290 on the <https://regulations.gov> website.

Comment 1

One commenter identifies procedural and analytical deficiencies under the incorporation by reference requirements of 1 CFR part 51, the Paperwork Reduction Act (PRA), and the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (RFA/SBREFA). The comment also requested that the EPA include brief determinations that the rule will not trigger the Unfunded Mandates Reform Act (UMRA) and that the action is not significant under E.O. 12866. The comment also asked if EPA relied on the "good-cause" exemption of the Administrative Procedure Act (APA).

Response 1

The EPA acknowledges the commenter's petition. The incorporation-by-reference requirements are already addressed in this action, and the APA "good-cause" exemption was not used for this action. With regard to the UMRA, the EPA has complied by making its own determination that this rule will not result in expenditures of \$100 million or more, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532. The RFA and SBREFA are inapplicable to this rule because the EPA has certified that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory analysis provisions of the RFA are only triggered by a threshold determination by the Agency that this rule will have a significant economic impact on a substantial number of small entities. Because the Agency has certified this rule will not have a significant economic impact, section 603 and 604 of the RFA do not apply to this rule. *See* 5 U.S.C. 605(b). The EPA has complied with the PRA by certifying in the rule that the PRA does not apply because the action does not involve an information

collection burden as defined by the Act. *See* 44 U.S.C. 3502(2). Lastly, the Agency has complied with E.O. 12866 by determining that this rule is not a significant regulatory action as defined in E.O. 12866.

Comment 2

One comment was submitted by James McGuire from Metuchen, New Jersey. The comment states that “[NYSDEC] applied a rigid standard to reject potential alternatives and did not thoroughly analyze all potential emission reduction alternatives; thus, the EPA should not approve the NYSDEC’s [SSSIP] controls for the [Boilers] and require the NYSDEC to re-analyze potential alternatives. The EPA has found that New York (and the [Facility]) is an Ozone Transport Region (OTR) and is in non-attainment with the National Ambient Air Quality Standards (NAAQS) for ozone. 42 U.S. Code 7511c. To reduce ozone emissions in this area, the CAA requires emitters to install [RACT] on all ozone-emitting sources. 42 U.S.C. 7511c. To comply with the CAA, the NYSDEC created presumptive RACT requirements that impose emission limits and specific control technologies on ozone emitters. *See* 6 NYCRR subpart 227-2.4. However, a source can request a source-specific RACT with a higher emission limit if it demonstrates that the presumptive control measures are not technically or economically feasible. *See* 6 NYCRR subpart 227-2.5(c). NYSDEC’s RACT analysis was insufficient and does not justify permitting this source to emit above the presumptive limits because it applied a rigid cost-effective test and did not fully consider all available emission control systems. NYSDEC analyzed three potential emission control options—fuel switching, low-NO_x burners, and flue gas recirculation—and found these methods technically feasible, but not economically feasible because each method went above New York’s cost reduction threshold. EPA Technical Support Document (TSD) Docket (EPA-R02-OAR-2025-0290) (pages 17 through 19). This analysis, however, does not adequately balance this cost against the environmental harm. Congress designed RACT to require sources to weigh economic feasibility against environmental benefits, not a rigid cost reduction threshold. Given that this facility is in a non-attainment zone for ozone

and currently has no emission controls at all, the NYSDEC should have investigated the potential health effects of this source more thoroughly and weighed those costs to the public against the economic costs to the source. Additionally, NYSDEC approved the facility's RACT plan even though the facility did not fully analyze all reasonably available alternatives. According to the Reasonably Available Control Technology, Best Available Control Technology, Lowest Achievable Emission Rate Clearinghouse (RBLC), which lists existing control measures for specific sources, there is an additional emissions control measure, selective catalytic reduction (SCR), which the facility did not discuss in its plan. The NYSDEC excused this, stating that this method was not common and not cost effective. EPA TSD Docket (EPA-R02-OAR-2025-0290) (page 26). This excuse does not hold up, given that Congress sought to require sources to consider all reasonably available emissions controls, not just the most common. 42 U.S.C. 7511a(b)(2). Given that another source successfully implemented this SCR emissions control at the Lackawanna Energy Center in Pennsylvania and recorded their work in the RBLC, it seems that this strategy is reasonably available, although still uncommon. Additionally, it is unclear how the NYSDEC determined that SCR controls are not cost-effective when the facility performed no comparative analysis of this emission control. Thus, the NYSDEC and the facility did not properly analyze all possible alternatives. Because the NYSDEC and the facility did not perform an adequate analysis of the possible alternatives to justify a source specific implementation plan the EPA should not approve this plan and require the NYSDEC and facility to complete a proper comparative analysis. This will ensure that New York continues to reduce their pollution and achieve compliance with the NAAQs to achieve the CAA's statutory goals."

Response 2

The EPA acknowledges the commenter's concerns about alternative RACT controls such as SCR. However, NYSDEC confirmed that the size of the boilers (mid-size) was enough to dismiss the evaluation of SCR. SNCR and SCR are only considered for large size boilers. According to the Alternative Control Techniques (ACT) Document – NO_x Emissions from

Industrial/Commercial/Institutional (ICI) Boilers, “SNCR and SCR controls have been applied primarily to larger boilers or new packaged boilers because these applications offer better control of temperature window and steady load demands.”¹ The Facility analyzed technologically feasible emission control options and determined that none were also economically feasible. The ACT document also states that low-NOx burners (LNB) are the most cost-effective control for single burner water tube boilers, but the Facility’s analysis found LNB to be over the State’s cost threshold. Therefore, because SCR is less cost-effective than LNB, SCR will also be, by definition, over the State’s cost threshold, according to Table 2-7 of the ACT document. Under the State’s regulation (DAR-20), NYSDEC established the cost threshold to define economic feasibility (based on 1994 dollars, then adjusted for inflation).

Comment 3

One comment was submitted by Shea Centore that states, “I do not support making an exception and believe they should revise.”

Response 3

EPA thanks the commenter for their input but without any substantial evidence supporting otherwise, this action will proceed for the reasons set forth above.

III. What action is the EPA taking?

The EPA is approving the Facility’s SSSIP revision submittal dated June 9, 2023 because the limits included in the SSSIP are demonstrated to implement RACT for emission unit B-OILRS, which represents the Boilers. Based on information provided by NYSDEC, a thorough RBLC review of similar sources and EPA’s ACT and Control Techniques Guidelines (CTG), and an analysis of this SSSIP revision, the EPA has determined the Facility’s operation under the NYSDEC approved NOx emission limits for the Facility’s Boilers implements RACT.

¹ Alternative Control Techniques, NOx Emissions from Industrial, Commercial & Institutional Boilers (<https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000INCA.txt>).

Specifically, the EPA has determined the following limits and associated requirements as implementing RACT. The Facility must: (1) have a maximum total emissions of 24 tons/yr of NO_x from the Boilers, on a rolling 12-month basis, with the total monthly NO_x emissions for each boiler calculated on a monthly basis; (2) maintain records of monthly NO_x emissions in a permanently bound log or in electronic format with reporting requirements annually and reports due 30 days after the reporting period; (3) have a maximum NO_x emission rate of 0.15 lb/MMBtu per hour for each of the Boilers when firing natural gas, and 0.25 lb/MMBtu per hour when firing distillate oil; and (4) conduct NO_x emission testing once every five years to verify that the actual NO_x emissions from a particular boiler are less than the maximum limits per hour when firing low sulfur distillate oil or natural gas.

IV. Incorporation by Reference

In this document, 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 revisions to the Facility's Title V operating permit conditions 56, 57, 58 as described in section I and II of this preamble. These documents are available in the docket of this rule through <https://www.regulations.gov>. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the 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 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, 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

² 62 FR 27968 (May 22, 1997).

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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant 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 (Pub. L. 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) because application of those requirements would be inconsistent with the CAA.

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).

This rule is exempt from the Congressional Review Act because it is a rule of particular applicability.

Under section 307(b)(1) of the CAA, 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 CAA 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.

Michael Martucci,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, EPA amends 40 CFR part 52 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. Amend § 52.1670, in the table in paragraph (d), by adding the entry “Calpine JFK Energy Center” at the end of the table to read as follows:

§ 52.1670 Identification of plan.

(d)***

EPA—APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier No.	State effective date	EPA approval date	Comments

Calpine JFK Energy Center	2-6308-00096/00009	06/28/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	RACT emission limit for condition 56, 57, and 58, emission unit B-OILRS.

[FR Doc. 2026-10770 Filed: 5/28/2026 8:45 am; Publication Date: 5/29/2026]