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Dated: April 25, 2013,

**Martha Kanter,**

*Under Secretary for Education.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2013-0274, FRL-9807-6]

#### Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve most elements of New York's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to conditionally approve certain elements of New York's submittals. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

**DATES:** Comments must be received on or before May 30, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2013-0274, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- *Email:* [Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov).

- *Fax:* 212-637-3901.
- *Mail:* Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- *Hand Delivery:* Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R02-OAR-2013-0274. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard

copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249, or by email at [wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov).

#### SUPPLEMENTARY INFORMATION:

- What action is EPA proposing?
- What is the background information?
- What is a section 110(a)(1) and (2) SIP?
- What elements are required under section 110(a)(1) and (2)?
- What did New York submit?
- How has the State addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions?
- What action is EPA taking?
- Statutory and Executive Order Reviews

#### I. What action is EPA proposing?

EPA is proposing to approve and conditionally approve elements of the State of New York Infrastructure SIP as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the 1997 ozone, 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS or standards). As explained below, the State has the necessary infrastructure, resources, and general authority to implement the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> standards, except where specifically noted.

#### II. What is the background information?

On July 18, 1997, EPA promulgated new and revised NAAQS for 8-hour ozone (62 FR 38856) and PM<sub>2.5</sub> (62 FR 38652). The ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm<sup>1</sup>. The new PM<sub>2.5</sub> NAAQS established a health-based standard of 15.0 micrograms per cubic meter (µg/

<sup>1</sup> EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 22, 2011, EPA clarified that the current ozone standard is set at 75 ppb. EPA is not addressing the 2008 ozone NAAQS in this rulemaking.

m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and a 24-hour standard of 65 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour PM<sub>2.5</sub> NAAQS from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup> on October 17, 2006 (71 FR 61144)<sup>2</sup>.

Section 110(a) of the CAA requires states to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS.

### III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA requires, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. In 1997, EPA promulgated the 8-hour ozone primary and secondary NAAQS and a new annual and 24-hour PM<sub>2.5</sub> NAAQS. Intervening litigation over the 1997 standards caused a delay in SIP submittals. In 2006, EPA promulgated a new 24-hour PM<sub>2.5</sub> NAAQS.

### IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements are listed in EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” and September 25, 2009, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards.”<sup>3</sup> The 14

elements required to be addressed are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees, and (14) consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46354 (August 3, 2012); 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the above infrastructure elements related to section 110(a)(2)(C) or 110(a)(2)(I).

This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS, since they had been addressed in previous rulemakings. See January 24, 2008 (73 FR 4109). Additionally, this action does not address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS, which was addressed in a previous EPA rulemaking. See July 20, 2011 (76 FR 43153).

### Scope of Infrastructure SIPs

This rulemaking will not cover four substantive issues that are not integral to acting on a state’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (“SSM”) at sources, that

may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA’s regulations that pertain to such programs (“minor source NSR”); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA’s “Final NSR Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA’s July 13, 2011, final rule entitled, “Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Michigan; Minnesota; Ohio; Wisconsin; Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” in the section entitled, “What is the scope of this final rulemaking?” (76 FR 41075 at 41076–41079).

### V. What did New York Submit?

EPA is acting on three New York SIP submittals, dated December 13, 2007, October 2, 2008 and March 15, 2010, which address the section 110 infrastructure requirements for the three NAAQS: the 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

#### December 13, 2007 SIP submission

New York’s section 110 infrastructure submittal was submitted by the New York State Department of Environmental Conservation (NYSDEC) on December 13, 2007 and addressed the 1997 ozone NAAQS. Effective April 28, 2008, the submittal was determined to be complete for all elements except 110(a)(2)(C). 73 FR 16205 (March 27, 2008). New York’s December 13, 2007 section 110 submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 1997 8-hour ozone NAAQS. This plan references the current New York Air Quality SIP, the New York Codes of Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer’s Law (POL). The NYCRR, ECL and POL

<sup>2</sup> EPA issued a revised PM<sub>2.5</sub> standard on January 15, 2013 (78 FR 3086). EPA is not addressing the 2012 PM<sub>2.5</sub> NAAQS in this rulemaking.

<sup>3</sup> “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” which can be found at [http://www.epa.gov/ttn/oarpg/t1/memoranda/110a\\_sip\\_guid\\_fin100207.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/110a_sip_guid_fin100207.pdf) and “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” which can be found at [http://www.epa.gov/ttn/oarpg/t1/memoranda/20090925\\_harnett\\_pm25\\_sip\\_110a12.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf).

referenced in the submittal are publicly available. New York's air pollution control regulations that have been previously approved by EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the Internet at: [http://www.epa.gov/region02/air/sip/ny\\_reg.htm](http://www.epa.gov/region02/air/sip/ny_reg.htm).

#### October 2, 2008 SIP submission

New York's section 110 infrastructure submittal for the 1997 PM<sub>2.5</sub> NAAQS was submitted by the NYSDEC on October 2, 2008, and the submittal was deemed complete April 2, 2009.

#### March 15, 2010 SIP submission

New York's section 110 infrastructure submittal for the 2006 PM<sub>2.5</sub> 24-hour NAAQS was submitted by the NYSDEC on March 15, 2010, and the submittal was deemed complete September 15, 2010.

EPA's evaluation of all three submittals is detailed in the "Technical Support Document for EPA's Proposed Rulemaking for the New York's State Implementation Plan Revision: State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act Dated December 13, 2007, October 2, 2008 and March 15, 2010" (TSD). As explained in the ADDRESSES section of this action, the TSD is available in the docket (EPA-R02-OAR-2013-0274) for this action and at the EPA Region 2 Office.

### VI. How has the State addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions?

#### A. Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, and schedules for compliance. EPA notes that the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). New York's ECL section 19-0301, provides the NYSDEC with power to formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling and prohibiting air pollution in such areas of the State as shall or may be affected by air pollution. The federally enforceable New York SIP contains enforceable emission limits and other control measures. EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(A) of the CAA with respect to the 1997 8-hour

ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### B. Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, to monitor, compile and analyze ambient air quality data, and to make these data available to EPA upon request. New York, under its authority provided in ECL subsection 19-0305(2)(d), operates and maintains a network of ambient air quality monitors used to sample the degree of air pollution throughout the State and submits the data collected to EPA. New York has submitted annual air monitoring network plans which have been approved by EPA. The most recent was approved by EPA on October 18, 2012. EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 1997 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### C. Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) and minor source new source review.

The NYSDEC is authorized by ECL section 19-0305, to enforce the codes, rules and regulations of the NYCRR. The minor source permitting and enforcement programs operate under Title 6 NYCRR Part 201, "Permits and Registrations". EPA proposes to find that the State has adequate authority and regulations to insure that SIP approved control measures are enforced for the 1997 8-hour ozone and the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS.

On March 3, 2009, the State of New York, through the NYSDEC, submitted to EPA Region 2 revisions to the New York SIP. The submittal consists of revisions to three regulations. The affected regulations are: 6 NYCRR Part 231, "New Source Review for New and Modified Facilities"; 6 NYCRR Part 200, "General Provisions"; and 6 NYCRR Part 201, "Permits and Certificates". The purpose of these revisions were to revise the New York State PSD program regulations and to update the existing New York State nonattainment regulations consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186). On November 17, 2010 (75 FR 70140),

EPA approved the New York PSD program.

EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. EPA also finds that based on the approval of New York's PSD program, New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements. EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(C) and (J) of the CAA with respect to the 1997 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### D. Interstate Transport

Section 110(a)(2)(D) is divided into two subsections, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) consists of two subsections (I) and (II), each of which has two "prongs." The two prongs under 110(a)(2)(D)(i)(I) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will (prong 1) contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to any primary or secondary NAAQS. The two prongs under 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the state from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility.

Section 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

In this action for New York, with respect to section 110(a)(2)(D)(i), we are only addressing prong 3 (i.e., interference with PSD) and prong 4 (i.e., to protect visibility) of 110(a)(2)(D)(i)(II). EPA previously took rulemaking action on prong 1 and prong 2 on January 24, 2008 (73 FR 4109) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS, and July 20, 2011 (76 FR 43153) for the 2006 PM<sub>2.5</sub> NAAQS, respectively. For prong 3, as discussed previously under (C) (Program for enforcement of control measures), on November 17, 2010 (75 FR 70140), EPA approved the New York PSD program. A state's infrastructure SIP submittal can be considered for approvability with respect to prong 3 if

EPA has issued final approval of that state's PSD SIP or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other states' measures to prevent significant deterioration of air quality. Therefore, we are proposing to approve New York's 110(a) submissions for prong 3 of 110(a)(2)(D)(i)(II) because New York has a federally approved PSD program.

For prong 4, New York has met its obligations pursuant to section 110(a)(2)(D)(i)(II) for visibility protection for all three NAAQS through its Regional Haze SIP submittals, which were approved by EPA on August 28, 2012 (77 FR 51915). The regional haze rule specifically requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. Thus, New York's approved Regional Haze SIP will ensure that emissions from sources within the State are not interfering with measures to protect visibility in other states. Therefore, EPA proposes to find for 8-hr ozone and PM<sub>2.5</sub> NAAQS that New York satisfies the section 110(a)(2)(D)(i)(II) requirement for visibility.

Regarding section 110(a)(2)(D)(ii), which relates to interstate and international pollution abatement, as noted above, on November 17, 2010 (75 FR 70140), EPA approved the New York PSD program which is consistent with 40 CFR 51.166(q)(2)(iv), and requires a source to notify air agencies whose lands may be affected by emissions from that source (see 6 NYCRR sections 231–7.4(f) and 8.5(f)). New York has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve New York's submissions for infrastructure element 110(a)(2)(D)(ii).

#### E. Adequate Resources

Section 110(a)(2)(E) requires each state to provide necessary assurances that the state (i) will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) will comply with the requirements respecting state boards under section 128, and (iii) where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

New York has adequate authority, under ECL sections 19–0301, 0303 and

0305, to carry out its SIP obligations with respect to the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. New York receives sections 103 and 105 grant funds along with required State-matching funds to provide funding necessary to carry out its SIP requirements. Therefore, EPA proposes to find New York has sufficient resources to meet the requirements of section 110(a)(2)(E)(i) for the 1997 8-hr ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

Congress added section 128 in the 1977 amendments. Titled “State boards,” section 128 provides in relevant part: (a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that: (1) Any board or body which approves permits or enforcement orders under [this Act] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under [this Act], and (2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. New York does not have a state board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the State's Commissioner of Environmental Conservation. Thus, the requirements of subsection 128(a)(1) are not applicable to New York. New York is subject to the requirements of section 128(a)(2). In its SIP submission New York cited POL sections 74(2) and 74(3)(e) which address conflict of interest. However, after further discussion with NYSDEC, it is more relevant to cite POL section 73-a, “Financial disclosure” and 19 NYCRR 937, “Access To Publicly Available Records,” as satisfying the section 128(a)(2) requirement. EPA proposes to conditionally approve the infrastructure SIP in fulfilling the requirements of section 110(a)(2)(E)(ii) for 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, provided the State submits POL section 73-a and 19 NYCRR 937 for approval as part of the SIP. In the alternative, should New York provide this information before we take final rulemaking, EPA will fully approve section 110(a)(2)(E)(ii).

Section 110(a)(2)(E)(iii) requires states to provide necessary assurances that, where the state has relied on a local or regional government, agency or instrumentality for the implementation of any provision of the SIP, the state has responsibility for ensuring adequate implementation of the SIP provision. The NYSDEC has delegation authority

for inspection and enforcement efforts of various regulations under the general enforcement powers provided in ECL section 19–0305.

While New York has the authority to delegate responsibilities to county or local governments to implement certain SIP responsibilities, the information provided in both infrastructure SIP submittals does not identify the specific organizations that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. EPA proposes to conditionally approve the infrastructure SIP with regard to the requirements of section 110(a)(2)(E)(iii). The State must identify the county or local governments or entities that participate in the SIP planning efforts, identify the county or local governments or entities that have been delegated responsibilities to implement or enforce portions of the SIP, and provide copies of the delegation orders or memoranda of understanding (MOUs) between the State and the county or local governments or entities. Since it is EPA's understanding that this deficiency involves information that exists but was not provided in the SIP submittal, EPA proposes to conditionally approve section 110(a)(2)(E)(iii) for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. In the alternative, should New York provide this information before we take final rulemaking, EPA will fully approve section 110(a)(2)(E)(iii).

#### F. Stationary Source Monitoring System

Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports.

The NYSDEC has the authority pursuant to ECL subsection 19–0311(3)(c) to require emissions monitoring, recordkeeping and reporting of stationary sources before an operating permit is issued or renewed. NYSDEC has adopted regulations to implement the federal requirements for stationary source emissions monitoring, reporting and recordkeeping in 6 NYCRR Part 201–6.4(b) and (c).

The NYSDEC adopted 6 NYCRR Part 202, “Emission Verification,” to require emissions reports from stationary sources. Further 6 NYCRR Part 616, Access to Records, specifically allows emission information to be made available to the public.

Based on the authority pursuant to ECL subsection 19–0311(3)(c) and the adoption of the Part 202, specifically subpart 202–2, “Emission Statements,” EPA is proposing to find that New York has met the requirements of section

110(a)(2)(F) for the 1997 8-hr ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### G. Emergency Power

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

For PM<sub>2.5</sub>, EPA's guidance dated September 25, 2009<sup>4</sup> provides clarification that states that have air quality control regions identified as either Priority I, Priority IA or Priority II by the "Prevention of Air Pollution Emergency Episodes" rules at 40 CFR 51.150 must develop emergency episode contingency plans. States are required to develop emergency episode plans for any area that has monitored and recorded 24-hour PM<sub>2.5</sub> levels greater than 140.4 µg/m<sup>3</sup> since 2006. A state that has never exceeded this level since 2006 is considered to be Priority III. 40 CFR 51.150(f). In accordance with the guidance, a Priority III area may certify that it has appropriate general emergency powers to address PM<sub>2.5</sub>-related episodes, and is not required to adopt specific emergency episode plans at this time, given the existing monitored levels.

Since 2006, air-quality monitors in New York show that PM<sub>2.5</sub> levels have been below the 140.5 µg/m<sup>3</sup> threshold. Based on air quality data, New York should be classified as a Priority III region and, therefore, emergency episode plans for PM<sub>2.5</sub> are not required.

However, in general and for the 1997 ozone standard, the section 110(a)(2)(G) requirements are addressed by New York's ECL, Articles 3 and 19, which are implemented through 6 NYCRR Part 207, "Control Measures for Air Pollution Episodes." Among other things, 6 NYCRR Part 207 requires persons who own a significant air contamination source to submit a proposed episode action plan to the NYSDEC Commissioner, and enable the Commissioner to designate air pollution episodes which trigger the action plans. Pursuant to Part 207.3(a), the NYSDEC Commissioner shall have on file and make available the criteria used in determining the need to designate episodes. The NYSDEC maintains an "Episode Action Plan" with guidelines and protocols/criteria to be followed in

case of an air pollution emergency. The NYSDEC's Episode Action Plan has been updated to reflect the PM<sub>2.5</sub> Significant Harm Levels (SHLs) proposed by EPA on January 15, 2009 along with revised values for ozone episodes. Therefore, New York has met the requirements of section 110(a)(2)(G) for the 1997 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> standards.

#### H. Future SIP Revisions

Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining NAAQS, and in response to an EPA finding that the SIP is substantially inadequate.

Revisions to the New York SIP are authorized by Article 19 and sections 3-0301, 19-0103, 19-0301, 19-0303 and 19-0305 of the ECL. Article 19 of the ECL was adopted to protect New York's air resources from pollution and to put into effect the policy of the State to maintain a reasonable degree of purity of the air resources, consistent with the public health and welfare and the industrial development of the State. NYSDEC is granted specific powers and duties, including the power to promulgate regulations for preventing, controlling, or prohibiting air pollution. NYSDEC also has the specific authority to regulate motor vehicle exhaust and approve air contaminant control systems as well as regulate fuels. Section 71-2103 provides general enforcement authority for the New York State air regulations. Section 71-2105 provides criminal enforcement authority. Thus, New York has the authority to revise SIPs and provide for enforcement in response to changes in the NAAQS and improve methods for attaining the NAAQS. EPA proposes to find that the State has adequate authority to develop and implement plans and programs that fulfill the requirements of section 110(a)(2)(H) for the 1997 8-hr ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### I. Nonattainment Area Plans Under Part D

Section 110(a)(2)(I) of the CAA requires that each such plan shall "in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas)." EPA is not evaluating nonattainment-related provisions, the NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because, as

discussed elsewhere in this proposal, these submittals have been addressed by other SIP revisions which EPA has or will be acting on in other rulemakings.

#### J. Consultation With Government Official, Public Notification, PSD, and Visibility Protection

Section 110(a)(2)(J) requires states to meet the applicable requirements of CAA section 121, relating to consultation, CAA section 127, relating to public notification, and CAA title I, part C, relating to the prevention of significant deterioration of air quality and visibility protection.

#### Consultation With Government Officials

Section 121 requires a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements. EPA finds that the 110(a) submittals from New York, and the cited authority of section 3-0303 of the ECL, meet the requirements of section 110(a)(2)(J) for consultation with government officials.

#### Public Notification

Section 127 requires that the state plan include measures to effectively notify the public of any NAAQS exceedances, advise the public of health hazards associated with such pollution, and include measures to enhance public awareness of measures that can be taken to prevent exceedances.

The NYSDEC's Web site, at <http://www.dec.ny.gov/chemical/34985.html> contains an Air Quality Index (AQI) for reporting daily air quality to the public. It describes how clean or polluted the air is, and what associated health effects might be a concern. It was created as a way to correlate levels of different pollutants to one scale; the higher the AQI value, the greater the health concern. When levels of ozone and/or fine particles are expected to exceed an AQI value of 100, an Air Quality Health Advisory is issued alerting sensitive groups to take the necessary precautions. The NYSDEC, in cooperation with the New York State Department of Health, posts warnings on the above-referenced Web site and issues press releases to local media outlets if dangerous conditions are expected to occur. The Air Quality Forecast displays the predicted AQI value for eight regions in New York State. It also displays the observed values for the previous day. Air quality measurements from New York's statewide continuous monitoring network are updated hourly where available. Parameters monitored include ozone, fine particulate, carbon

<sup>4</sup> See Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS), from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, dated September 25, 2009.

monoxide, sulfur dioxide, nitrogen oxides, methane/nonmethane hydrocarbons, and meteorological data.

EPA is proposing to find that New York's SIP submittal has met the public notification requirements of section 110(a)(2)(f) for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. See section 19-0305 of the ECL.

#### PSD

Section 110(a)(2)(f) also requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection. EPA evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting (see discussion under (C) (program for enforcement of control measures)). EPA interprets this section 110 provision relating to visibility as not being "triggered" by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

On November 17, 2010 (75 FR 70140), EPA approved the New York PSD program, as discussed under (C) (program for enforcement of control measures). The approvability of a state's PSD program in its entirety is essential to the approvability of the infrastructure SIP with respect to section 110(a)(2)(f). Therefore, EPA proposes to approve New York's infrastructure SIP with respect to the PSD sub-element of 110(a)(2)(f).

#### K. Air Quality and Modeling/data

Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Authorized pursuant to sections 3-0301, 19-0103, 19-0301, 19-0303 and 19-0305 of the ECL, NYSDEC performs modeling as necessary to assess the degree of pollution in New York State. The NYSDEC certifies that the air quality modeling and analysis used in its SIPs complies with EPA's guidance on the use of models in attainment demonstrations, and commits to continue to use air quality models in accordance with EPA's approved modeling guidance and to submit data to EPA if requested. EPA proposes to find that the State has adequate authority to perform air quality modeling that fulfills the requirements of section 110(a)(2)(K).

#### L. Permitting Fees

Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing

and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the State's Title V operating permit program.

EPA's full approval of the Title V program for New York became effective on November 30, 2001. In New York State, the Title V Permit Fee Program is established in ECL section 19-0311(c) requiring the NYSDEC to promulgate regulations that, among other things, require applications to identify and describe facility emissions in sufficient detail to establish the basis for the fees and applicability of requirements of the CAA. ECL section 72-0303 requires major stationary sources to pay operating permit program fees sufficient to support an appropriation approved by the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311.

In addition, paragraph 201-6.5(a)(7) of 6 NYCRR subpart 201-6, the NYSDEC's approved Title V program, specifically states that "The owner and/or operator of a stationary source shall pay fees to the department consistent with the fee schedule authorized by Subpart 482-2 of this Title."

EPA proposes to find that the State has met the requirements for section 110(a)(2)(L).

#### M. Consultation/participation by Affected Local Entities

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

EPA proposes to find that the State has adequate authority and procedures that fulfill the requirements of section 110(a)(2)(M). See ECL section 3-0303(3).

#### VII. What action is EPA taking?

EPA is proposing to approve New York's submittals as fully meeting the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E)(i), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing that EPA's action on October 22, 2008 (73 FR 62902) for New York has been satisfied.

EPA is proposing to conditionally approve New York's submittals for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS for the following 110(a)(2) sub-elements: E(ii) (state boards and conflict of interest provisions) and E(iii) (delegations). New York must commit in writing on or before May 30, 2013 to correct the deficiencies discussed above. New York

must then correct the deficiencies and submit them to EPA within one year of EPA's final action on this SIP action. Some of the deficiencies involve providing information that EPA is familiar with and believes currently exists, but was not included in the State's submittal. Should New York provide this information before we take final rulemaking, EPA is also proposing in the alternative to fully approve New York's submittals for the section 110(a)(2)(E)(ii) and section 110(a)(2)(E)(iii) sub-elements.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from a State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to complete requirements of each section 110(a)(2) element listed above. If New York fails to do so for any section 110(a)(2) element, our conditional approval of that element will, by operation of law, become a disapproval for New York one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved SIP for New York. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If New York meets its commitments within the applicable time frame, the conditionally approved submission will remain a part of the SIP or SIPs until EPA takes final action approving or disapproving the element in question.

If EPA disapproves a State's new submittal, the conditionally approved section 110(a)(2) element will also be disapproved at that time. If EPA approves the submittal, the section 110(a)(2) element will be fully approved in its entirety and replace the conditionally approved 110(a)(2) element in the SIP. Finally, if, based on information received before EPA takes final action on this proposal, EPA determines that it cannot issue a final conditional approval for one or more elements for which EPA has proposed a conditional approval, then EPA will instead issue a disapproval for such elements.

As discussed in section I, above, EPA is not acting on New York's submittal as it relates to nonattainment provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure

SIPs because these submittals have been addressed by other SIP revisions which EPA has or will be acting on in other rulemakings.

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery or courier following the directions in the **ADDRESSES** section of this **Federal Register**.

### VIII. 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 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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);
- 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; 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

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

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

Dated: April 19, 2013.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2013-10168 Filed 4-29-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 61

[EPA-R09-OAR-2011-0981; FRL 9806-2]

### Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona, California, and Nevada

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve updates to the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) in Arizona, California, and Nevada.

**DATES:** Any comments on this proposal must arrive by May 30, 2013.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0981, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *Email:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Borgia at (415) 972-3576, [borgia.adrienne@epa.gov](mailto:borgia.adrienne@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal will update the delegation tables in Title 40 Code of Federal Regulation Parts 60 and 61, to allow easier access by the public to the status of NSPS and NESHAP delegations in Arizona, California, and Nevada. In the Rules and Regulations section of this **Federal Register**, we are updating these delegations tables in a direct final action without prior proposal because we believe these delegations are not