Authority: 38 U.S.C. 501, and as noted in specific sections.

[FR Doc. 2014–21790 Filed 9–11–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0527; FRL–9916–49–Region 2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2010 Nitrogen Dioxide Primary Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2010 National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO_2). Section 110(a) of 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: This rule is effective on October 14, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2013–0527. All documents in the docket are listed on the *www.regulations.gov* Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *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. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, or by email at *gardella.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the background information and purpose of this action?

Under CAA section 110(a)(1), states are required to submit plans called state implementation plans (SIPs) that provide for the implementation, maintenance and enforcement of each NAAQS and are referred to as infrastructure SIPs. 42 U.S.C. 7410(a)(1). On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 (2010 NO_2 NAAQS) while retaining the annual primary NAAQS for NO_2 (75 FR 6474). Under CAA section 110(a)(2), the 14 elements required to be addressed in infrastructure SIPs 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.

EPA is acting on New York's SIP submittal dated May 8, 2013, as supplemented on May 23, 2013, which addresses the section 110 infrastructure requirements for the 2010 NO_2 NAAQS. Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three 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 CAA section 191. (See also CAA section 172 for general nonattainment plan requirements). 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 nonattainment area plan requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

II. What comments did EPA receive in response to its proposal?

EPA received one anonymous adverse comment on the May 2, 2014 (79 FR 25066) rulemaking proposing to approve New York's SIP submittal. EPA has evaluated the comment as discussed below and has determined that New York's SIP revision addressing the 2010 NO_2 NAAQS is consistent with the CAA and therefore EPA is approving New York's SIP revision into the New York SIP. Following is the comment and EPA's response.

Comment: The commenter states that EPA cannot approve New York's interstate transport provision addressed in its 2010 NO_2 NAAQS infrastructure SIP revision because, according to the commenter, the Supreme Court decision in *EME Homer City* v. *EPA* ''requires SIPs to 'contain adequate provisions prohibiting any source or emissions activity within the State from emitting ANY pollutants in amounts which will contribute to nonattainment in, or interfere with maintenance by, any other State with respect to any other State with respect to ANY [NAAQS].' (emphasis on 'any').'' The commenter also quotes from EPA's May 2, 2014 rulemaking which proposes to approve New York's 2010 NO_2 infrastructure SIP revision and states that NO_X is a precursor for ozone and $PM_{2.5}$ and that NO_2 is a component of NO_X. The commenter states that because of the aforementioned Supreme Court decision, EPA must evaluate New York's 2010 NO_2 infrastructure SIP revision submission, as it relates to interstate transport, with respect to all NAAQS and not just for the 2010 NO_2 NAAQS.

Response: This comment addresses the requirements of CAA section 110(a)(2)(D)(i)(I). This provision, often referred to as the good neighbor provision, requires each State Implementation Plan to prohibit ''any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will . . . contribute significantly to nonattainment in or interfere with maintenance by, any other state with respect to any . . . primary or secondary [NAAQS].'' 42 U.S.C. 7410(a)(2)(D)(i). The recent Supreme Court decision in *Environmental Protection Agency* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014), addressed the requirements of this provision and reversed the prior DC Circuit decision vacating EPA's Cross-State Air Pollution Rule. The commenter quotes from the section of the Supreme Court decision that

discusses the historical development (from 1963 onward) of EPA's interstate transport policy (also referred to as the 'Good Neighbor' Provision). The quoted language essentially tracks the statutory text of CAA Section 110(a)(2)(D)(i)(I), which describes specific elements that must be included in State Implementation Plans to address pollution that is transported across state lines. As the Supreme Court decision in *EME Homer City* confirmed, pursuant to CAA section 110(a)(1), state plans to address these requirements must be submitted to the Administrator within three years of the promulgation or revision of a NAAQS. *EME Homer City,* 134 S. Ct. at 1600.

EPA interprets the comment as stating that the 110(a)(2)(D)(i)(I) provisions of New York's 2010 NO_2 infrastructure SIP should address, in addition to emissions that significantly contribute to nonattainment or interfere with maintenance of the NO_2 NAAQS, any emissions that significantly contribute to nonattainment or interfere with maintenance of all other NAAQS, particularly the NAAQS for ozone and $PM_{2.5}$ since NO_2 is a component of NO_X and NO_X is a precursor for ozone and $PM_{2.5}$. EPA disagrees. Because it is the promulgation or revision of a NAAQS that triggers the requirement to submit a SIP addressing the requirements of 110(a)(2)(D)(i)(I), EPA interprets the CAA as requiring each such SIP to address the 110(a)(2)(D)(i)(I) requirements only with respect to the specific NAAQS at issue. In other words, each 110(a)(2)(D)(i)(I) SIP submission need only address the specific NAAQS which had been promulgated or revised by EPA thereby triggering the SIP submission requirement. Because New York submitted this SIP to address the applicable requirements of 110(a)(2) with respect to the 2010 NO_2 NAAQS, it need only demonstrate that the SIP is adequate to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS in other states. Any emissions that have such impacts with respect to other NAAQS must be addressed as appropriate in the 110(a)(2)(D)(i)(I) SIP submissions for those other NAAQS. In its May 8, 2013 action, EPA proposed to conclude that New York's May 8, 2013 infrastructure SIP revision, as supplemented on May 23, 2013, addressed all applicable CAA infrastructure SIP requirements, including the requirements of 110(a)(2)(D)(i)(I), with respect to the NO_2 NAAQS. 79 FR 25066, 25071–25073. The commenter has offered no data or evidence to suggest that the submission does not do so.

III. What is the impact of the June 2014 Supreme Court Green House Gas decision on New York's infrastructure SIP for the 2010 NO_2 NAAQS?

With respect to Elements C and J, EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. New York has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined the New York SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously-approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved New York PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, D(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of New York's infrastructure SIP as to the requirements of Elements C, D(i)(II), and J.

IV. What action is EPA taking?

EPA is approving New York's submittal as fully meeting the applicable infrastructure requirements for the 2010 primary NO_2 NAAQS for the following section 110(a)(2) elements: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

As stated above, this action does not address the nonattainment area plan requirements related to sections 110(a)(2)(C) or 110(a)(2)(I). EPA will act on them when they become due and are submitted.

V. 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 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 2, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding a new entry to the end of the table in paragraph (e) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or non-attainment area	New York submittal date	EPA approval date	Explanation
*	*	*	* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2010 Primary Nitrogen Dioxide NAAQS.	Statewide ..	5/08/13, and supplemented on 5/23/13.	9/12/14 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–21682 Filed 9–11–14; 8:45 am]

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