

EPA has determined that this SIP revision meets the requirements of the CAA. Therefore, EPA is proposing to approve the July 10, 2013, SIP revision which sets sulfur limits for combustion and sale in Delaware, as amended by Delaware on August 19, 2016. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

In addition, based on Delaware's removal of the language in section 1.2, which EPA identified in the 2015 SSM SIP Action as an impermissible SSM exemption provision, EPA proposes to find that this SIP revision adequately addresses the specific deficiency that EPA identified in the 2015 SSM SIP Action with respect to section 1.2 of the Delaware SIP. If EPA were to finalize approval of the SIP revision and finalize the finding that this SIP revision adequately addresses the SIP call, the SIP call for section 1.2 of the Delaware SIP would be resolved. The remaining portions of the SIP call issued to Delaware in 2015 would remain in effect pending future EPA action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state rules being approved. In accordance with requirements of 1 CFR 51.5, EPA is thus proposing to incorporate by reference Delaware's Sulfur Dioxide Emissions from Fuel Burning Equipment requirements as described in 7 DE Admin. Code 1108, not including the last sentence of section 3.0, which Delaware withdrew from this SIP revision. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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 meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- 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; 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 proposed rule, regarding fuel oil sulfur limits for combustion and sale in the State of Delaware, 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, Particulate matter, Regional Haze, Sulfur oxides.

Dated: January 13, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2021-0572, FRL-9439-01-R2]

Approval and Promulgation of Implementation Plans; New York; Ozone and Particulate Matter Controls Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve several revisions to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution by particulate matter (PM) and oxides of nitrogen (NO_x). The proposed SIP revisions consist of amendments to several existing regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for PM and NO_x. The intended effect of this action is to approve control strategies, required by the Clean Air Act (CAA or the Act), which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone and PM. These actions are being taken in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2021-0572 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION: The Supplementary Information section is arranged as follows:

- I. What action is the EPA proposing?
- II. What is the background for this proposed rulemaking?
- III. What was included in New York's submittals?
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 - A. Background
 - B. What are the new requirements of Part 222?
 - C. What is the EPA's evaluation?
- VI. What other revisions did New York make?
- VII. What is the EPA's conclusion?
- VIII. Incorporation by Reference
- IX. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

The EPA is proposing to approve revisions to the New York SIP submitted by the State of New York on February 3, 2021 and October 15, 2020 that pertain to existing regulations, Title 6 of the New York Code of Rules and Regulations (6 NYCRR Part 219, "Incinerators" (Part 219), and 6 NYCRR Part 222, "Distributed Generation Sources" (Part 222), respectively. The EPA is also proposing to approve attendant revisions to 6 NYCRR Part 200 (Part 200), Section 200.9, "General Provisions, Reference materials" (Section 200.9).

These revisions include additional control strategies that will reduce NO_x and PM emissions from major sources throughout the state. The EPA is proposing to approve New York's SIP submittals listed within this action as a SIP-strengthening measure for New York's ozone and PM SIP. The EPA is also proposing to approve New York's SIP submittal since it incorporates additional reasonably available control technology/reasonably available control measures (RACT/RACM) rules for NO_x at Municipal and Private Solid Waste Incineration Units.

II. What is the background for this proposed rulemaking?

2008 and 2015 Ozone NAAQS Revisions

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

On May 21, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour Ozone Standard and, on July 20, 2012, the designations became effective. *See* 77 FR 30160 (May 21, 2012). The New York-Northern New Jersey-Long Island Connecticut metropolitan area (NYMA) was designated by the EPA as a "marginal" nonattainment area for the 2008 ozone NAAQS.¹ In 2016, the EPA determined that the NYMA did not attain the 2008 ozone standard by the July 20, 2015 attainment date and was reclassified from a "marginal" to a "moderate" nonattainment area. *See* 81 FR 26697 (May 4, 2016). SIPs for "moderate" nonattainment areas were due by January 1, 2017. *See id.* On April 30, 2018, the EPA finalized its attainment/nonattainment designations for most areas across the country as to the 2015 8-hour Ozone Standard, in which the NYMA was designated by the EPA as a "moderate" nonattainment area. *See* 83 FR 25776 (June 4, 2018). On September 23, 2019, the EPA reclassified the NYMA to "serious" nonattainment as to the 2008 8-hour Ozone Standard. *See* 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for RACT measures not tied to attainment was July 20, 2021. *See id.*

PM NAAQS Revisions

On September 21, 2006, the EPA retained the primary and secondary 24-hour PM₁₀ standard of 150 micrograms per cubic meter of air (µg/m³), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987. *See* 71 FR 61144 (October 17, 2006); *see also* 52 FR 24634 (July 1, 1987).

On October 17, 2006, the EPA strengthened the primary and secondary

24-hour PM_{2.5} NAAQS to 35 µg/m³. *See* 71 FR 61144. On November 13, 2009, the EPA promulgated designations for the revised 24-hour PM_{2.5} standard set in 2006, designating the NY-NJ-CT area as "nonattainment." *See* 74 FR 58688. On June 27, 2013, New York submitted a request to redesignate the New York portion of the NY-NJ-CT nonattainment area, from "nonattainment" to "attainment." As part of this request, New York also submitted a maintenance plan to ensure that New York's portion of the NYMA would continue attainment through 2025. On April 18, 2014, the EPA took final action to approve New York's SIP revision to redesignate the New York portion of the NY-NJ-CT to "attainment" for the 2006 24-hour PM_{2.5} NAAQS. *See* 79 FR 21857.

On December 14, 2012, the EPA promulgated a revised primary NAAQS for PM_{2.5} for the annual standard, setting the level at 12 micrograms per cubic meter (µg/m³) calculated as an annual average, which is averaged over a three-year period. *See* 78 FR 3086.

On January 15, 2015, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the revised primary PM_{2.5} NAAQS and on April 15, 2015, the designations became effective. *See* 80 FR 2206. The NYMA was designated by the EPA as an "Unclassifiable/Attainment" area for the revised primary PM_{2.5} NAAQS. *See id.*

III. What was included in New York's submittals?

On February 3, 2021 and October 15, 2020, the New York State Department of Environmental Conservation (NYSDEC or New York), submitted to the EPA proposed revisions to the SIP, which included State adopted revisions to three regulations contained in Part 219, "Incinerators," and Part 222, "Distributed Generation Sources" with effective dates of March 14, 2020 and March 25, 2020, respectively. New York also submitted attendant revisions to Part 200, Section 200.9, "General Provisions, Reference materials. These revisions are applicable statewide, with the exception of Part 222 which will only be applicable to sources located within the NYMA. These revisions will provide NO_x and PM_{2.5} emission reductions statewide and will address, in part, attainment of the 2008 and 2015 8-hour Ozone Standards within the NYMA and maintain New York State's attainment of the PM NAAQS.

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

IV. What is the EPA's evaluation of Part 219, "Incinerators"?

A. Background

The NYSDEC revised 6 NYCRR Part 219, by repealing and replacing 6 NYCRR Subpart 219-4, "Human and Animal Crematories," to better reflect the current state of cremation technology and reduce emissions of PM from new animal and human crematories constructed in the state. New York also repealed and reserved 6 NYCRR Subparts 219-5 and 219-6, requiring the existing units subject to these requirements comply with the more stringent standards under the revised 6 NYCRR Subpart 219-4 (Subpart 219-4). New York also revised 6 NYCRR Subpart 219-1 (Subpart 219-1) and Part 200, Section 200.9 to clarify various definitions used throughout Part 219. In addition, New York is adding a new 6 NYCRR Subpart 219-10, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x) at Municipal and Private Solid Waste Incineration Units" (Subpart 219-10), to impose 24-hour and annual average RACT NO_x emission limits for private and municipal waste combustion units.

B. What are the new requirements of Part 219?

NYSDEC revised Subpart 219-1 and Part 200, Section 200.9 to incorporate minor edits to definitions used throughout Part 219, in order to provide clarity to applicable owners or operators. The newly revised Subpart 219-4 applies to all new, modified, and existing cremation units used for the cremation of human and animal remains throughout the New York State. Under this regulation, owners and operators of applicable cremation units must comply with the PM emission limitations and operating requirements. 6 NYCRR Section 219-4.1 was revised to add definitions for existing, modified, and new cremation units. 6 NYCRR Section 219-4.2 was revised to address that Subpart 219-4 is applicable to all new, modified, and existing cremation units used for animal and human remains.

6 NYCRR Section 219-4.3 was revised to implement the PM emission limits for new, modified, and existing cremation units. Under Section 219-4.3, no owner or operator may cause or allow emissions of particulates into the outdoor atmosphere from an existing cremation unit to exceed 0.08 grains per dry standard cubic foot of flue gas (0.08 gr/dscf), corrected to 7 percent oxygen. And no person may cause or allow emissions of particulates into the outdoor atmosphere from a new or

modified cremation unit to exceed 0.05 gr/dscf, corrected to 7 percent oxygen.

Under 6 NYCRR Section 219-4.4, the owner and operator of cremation units must comply with various operating requirements including: An opacity limit, a minimum secondary combustion chamber temperature and residence time during cremation, installation of an continuous temperature monitoring instruments and continuous recording requirement, a prohibition on the combustion of certain materials, preparation of a cremation certification form prior to cremation, and a prohibition on the charging of remains in excess of the manufacturer's rated capacity of the cremation unit.

6 NYCRR Section 219-4.5 was revised to establish the emission testing and modeling requirements for cremation units. Owners or operators of affected cremation units must demonstrate compliance with this Subpart by either conducting onsite testing or stack testing. 6 NYCRR Section 219-4.6 establishes operator training and certification requirements for crematory operators. 6 NYCRR Section 219-4.7 outlines the annual inspection and maintenance requirements for the cremation units. 6 NYCRR Section 219-4.8 describes the recording requirements for crematory facilities.

6 NYCRR Section 219-4.9 was revised to describe the compliance schedule for existing cremation units that are subject to the requirements under Subpart 219-4. Section 219-4.9 outlines that owner or operator of an existing cremation unit must obtain appropriate operator certifications, as described in 6 NYCRR Section 219-4.6, within 12 months of the effective date of 6 NYCRR Subpart 219-4 for each uncertified operator at the facility. Owners and operators also must demonstrate compliance with the requirements of this Subpart no later than 60 months from the effective date of 6 NYCRR Subpart 219-4.

New York has repealed and reserved 6 NYCRR Subparts 219-5 and 219-6, requiring that the existing units subject to those requirements comply with the more stringent standards under the new Subpart 219-4.

Subpart 219-10 is new and applies to all new, modified, and existing municipal and private solid waste incineration units. 6 NYCRR Section 219-10.2 establishes the 24-hour and annual average NO_x emissions limitation and describes the procedures that affected facilities can use to demonstrate that they have installed

RACT.² Both the 24-hour and annual average NO_x emission limits vary between the combustion technology utilized by the owner or operator. Incineration units that utilize Mass Burn Waterwall or Rotary Combustor technology must comply with presumptive RACT limits, while owners or operators of other combustion technologies must perform a facility-specific RACT analysis. The analysis must include proposed 24-hour and annual average NO_x emission limitations, the available NO_x control technology, the projected effectiveness of the technologies considered, and the costs for installations and operation for each of the technologies. The RACT analysis was to be submitted to the NYSDEC by June 30, 2021. Approved RACT determinations will be submitted by the NYSDEC to the EPA for approval as separate SIP revisions.

6 NYCRR Section 219-10.3 outlines the compliance demonstration for the owners or operators of a municipal or private solid waste incineration unit subject to this Subpart. Under 6 NYCRR Section 219-10.3, owners or operators of a municipal or private solid waste incineration applicable to this Subpart must demonstrate compliance within one year of the date of issuance of a permit modification issued pursuant to the requirements of this Subpart. Owners or operators applicable to this shall install, calibrate, maintain, and operate a Continuous Emissions Monitoring System (CEMS) for measuring the oxides of nitrogen discharged to the atmosphere from the municipal or private solid waste incineration units.

C. What is EPA's evaluation?

The EPA reviewed both New Jersey and Connecticut's PM emission limits for human and animal cremation units and compared those limits with the limits adopted by NYSDEC in this rule.³ The EPA has observed that New York's PM limits are more stringent than both New Jersey and Connecticut's for similar crematory technologies.

The EPA has also reviewed New Jersey and Connecticut's NO_x emission limits for municipal and private solid waste incineration units with similar

² The NO_x emission limits are on a parts per million dry volume basis (ppmvd), corrected to 7% oxygen.

³ Title 7, Chapter 27, Subchapter 11 of New Jersey's Incinerator regulation provides PM emission rates for various types of Incinerators. See <https://www.nj.gov/dep/aqm/currentrules/Sub11.pdf>. Section 22a-174-18 of Connecticut's regulations provides controls for PM and visible emissions from existing incinerators. See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-18/.

combustion technology and compared those limits with the limits adopted by NYSDEC in this rule.⁴ The EPA observed that Connecticut adopted similar RACT emission limits, on a 24-hour average, for Mass Burn Waterwall combustors. The EPA also observed that NO_x emission limits outlined within New York's rule will be as stringent as New Jersey's for similar combustion technologies.

The EPA has reviewed New York's SIP submittal, which seeks to incorporate revisions to 6 NYCRR Part 219, "Incinerators. After evaluating Part 219 for consistency with the CAA, EPA regulations, and EPA policy, the EPA proposes to find that the submission fully addresses the ozone nonattainment requirement found in CAA Section 172, 42 U.S.C. Section 7502, and proposes to approve this revision. The EPA also proposes that the submission addresses the PM requirements found in CAA Section 175A, 42 U.S.C. Section 7505a.

V. What is the EPA's evaluation of Part 222, "Distributed Generation Sources"?

A. Background

New York revised Part 222 to impose more stringent NO_x control requirements on sources operated as part of demand response programs or designated as price-responsive "economic" generation sources in New York City, Long Island, and Rockland and Westchester counties. Distributed Generation (DG) units enrolled within demand response programs are often low-level NO_x controlled diesel-fired engines that contribute significant NO_x emissions within the NYMA during High Electrical Demand Days. The revisions to Part 222 essentially entail control requirements beginning in 2021 with additional phased-in control requirements beginning in 2025. Both control requirements will increase the stringency of emissions limits for these engines used in non-emergency applications.

B. What are the new requirements of Part 222?

Part 222 was revised to include revisions of several definitions, a change in application and permitting requirements, a change in control requirements for economic dispatch sources, and revisions to emission

testing and recordkeeping. DG sources are stationary reciprocating or rotary internal combustion engines used by host facilities or sites to supply electricity into the distribution grid or produce electricity for use at the host facilities or both. This includes, but is not limited to, emergency power generation stationary internal combustion engines and demand response sources. The demand response program is an emergency program sponsored by the New York Independent System Operator (NYISO) or distribution utilities in New York to call upon owners of low-level NO_x controlled distributed generation engines to generate electricity for host facilities on high demand days, to reduce demand on the electrical grid and preserve its reliability. Economic dispatch sources are defined as distributed generation sources used to provide electricity for general use to a building, structure, or collection of structures in place of electricity supplied by the distribution utilities. Economic dispatch sources are also considered as price-responsive generation sources which are distributed generation sources used to provide electricity for short periods of time when the cost of electricity supplied by the distribution utility is high. The revised Part 222 applies to owners and operators of distributed generation sources classified as economic sources located within the NYMA with a maximum mechanical output rating of 200 horsepower (hp) or greater where the potential to emit of NO_x at a facility is less than 25 tons/year.

6 NYCRR Section 222.1 was revised to incorporate the applicability of Part 222. 6 NYCRR Section 222.2 was revised to amend the definitions that apply to this Part, which include: Compression ignition, demand response program, demand response source, demand response event, distribution utility, distributed generation source, economic dispatch source, lean burn engine, maximum load relief, model year, rich burn engine, spark ignition, and three-way catalyst controls. The definitions of Part 200, as well as 6 NYCRR Subpart 200.1 and Subpart 201–2 of still apply to Part 222 unless they are inconsistent with the definitions outlined within 6 NYCRR Section 222.2.

6 NYCRR Section 222.3 was revised to specifically require owners or operators of a distributed generation source to obtain a permit or registration certificate in accordance with 6 NYCRR Part 201 prior to the operation as an economic dispatch source. The revisions also require owners or operators to notify

NYSDEC, in writing by March 15, 2021 or 30 days prior to operating, whichever is later, their distributed generation source as an economic dispatch source.

6 NYCRR Section 222.4 (Section 222.4) was revised to implement the control requirements of economic dispatch sources that will be subject to Part 222. Effective May 1, 2021, depending upon the engine and fuel type, economic dispatch sources must comply with presumptive NO_x emission limits, or at least be a model year of 2000, or must be equipped with control technology (Phase One).⁵ As of May 1, 2025, the second and final phase of NO_x emission limits for economic dispatch sources will become effective. Depending on the engine and fuel type, owners and operators must comply with more stringent NO_x emission limits than the Phase One limits. Section 222.4 allows owners or operators of impacted sources to request an extension of the compliance date for the 2025 NO_x control requirements in Part 222. Owners or operators that request additional time to install controls or install new engines or turbines must provide evidence to NYSDEC; in any case, the extension may not exceed two years beyond the 2025 compliance date. Also, emission test reports that demonstrate compliance with the control requirements outlined in Section 222.4 must be submitted and approved by NYSDEC before a distributed generation source may be operated as an economic dispatch source on or after May 1, 2025.

6 NYCRR Section 222.5 was revised to require owners or operators to submit the emission test reports outlined in Section 222.4. This section also describes how the emission test reports must be submitted, the emission test methods, and additional protocols required.

6 NYCRR Section 222.6 (Section 222.6) was revised to include the recordkeeping provisions required by owners and operators subject to Part 222. NYSDEC may enter a facility during normal operating hours to inspect an economic dispatch source subject to the requirements of Part 222, and inspect any records, papers, logbooks, and operational data maintained pursuant to Part 222. Facilities subject to Part 222 must also maintain records regarding hours of operation and fuel use for a period of five years. Section 222.6 also requires that owners or operators to conduct

⁴ Title 7, Chapter 27, Subchapter 19 of New Jersey's NO_x RACT regulation provides NO_x emission rates for Municipal Waste Combustors. See <https://www.nj.gov/dep/aqm/currentrules/Sub19.pdf>. Section 22a-174–38 of Connecticut's regulations provides NO_x emission limits for Municipal Waste Combustors. See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-38/.

⁵ Model year is defined within Part 222 as the calendar year in which the engine was originally produced; or the annual new model production period of the engine manufacturer if it is different than the calendar year.

stack testing to demonstrate compliance with the emission standards detailed in Part 222 for economic dispatch sources that will operate on May 1, 2025 and beyond.

C. What is EPA's evaluation?

New York has revised Section 222.4 (control requirements) to require more stringent NO_x emission limits on sources used in demand response programs or designated as economic dispatch sources in the NYMA. New York has estimated that once the phased-in controls requirements are implemented by the May 1, 2025 compliance date, actual NO_x emissions in the State will be reduced by 5 tons per day. The following summarizes the revised control requirements from Section 222.4 that are expected to result in NO_x reductions beginning on May 1, 2025:

- For combustion turbines firing natural gas, presumptive NO_x emission limits are reduced to 25 parts per million on a dry volume basis corrected to 15 percent oxygen.

- For combustion turbines firing oil, presumptive NO_x emission limits are reduced to 42 parts per million on a dry volume basis corrected to 15 percent oxygen.

- For spark ignition engines firing natural gas, presumptive NO_x emission limits are reduced to 1.0 grams per brake horsepower-hour.

- For compression-ignition engines firing distillate oil with nameplate rating less than 750 hp, presumptive NO_x emission limits are reduced to 0.30 grams per brake horsepower-hour.

- For compression-ignition engines firing distillate oil with nameplate rating greater than or equal to 750 hp, presumptive NO_x emission limits are reduced to 0.50 grams per brake horsepower-hour.

The EPA believes that the new presumptive emission limits and other control requirements will result in additional NO_x reductions throughout the State thereby strengthening New York's ozone SIP and will help the State reach attainment for the 2008 and 2015 ozone standards.

The EPA agrees with New York's evaluation that the newly-adopted regulation will lead to an estimated reduction of 3.5 tons per day in 2021 and 5 tons per day by 2025 for demand response sources. A 3.5 or 5 ton per day reduction in NO_x emissions is a necessary step towards meeting New York's obligation under Section 110 of the CAA. This reduction will result in NO_x reductions throughout the NYMA, strengthen New York's ozone SIP, and help the State reach attainment for the

2008 and 2015 ozone NAAQS. The EPA evaluated the provisions of Part 222 for consistency with the CAA, EPA regulations, and EPA policy and proposes to find that the submission fully addresses the ozone nonattainment requirements found in CAA Section 172, 42 U.S.C. 7502, and proposes to approve this revision.

VI. What other revisions did New York make?

New York also made administrative changes to Part 200 ("General Provisions") which reflect the revisions to Part 219 and Part 222 discussed above. Specifically, the revisions to Part 200 will add new references in Section 200.9, "Referenced Material", Table 1. The revisions to Table 1 of Section 200.9 include all documents referenced in New York's amendments to Part 219 and Part 222. It is important to note that EPA is proposing to approve only those respective revisions made to Part 200, specifically Section 200.9 as amended on March 14, 2020 and March 25, 2020.

VII. What is the EPA's conclusion?

The EPA evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA proposes that the revisions discussed above (6 NYCRR Part 200, "General Provisions", Part 219, "Incinerators," and Part 222, "Distributed Generation Sources," with effective dates of March 14, 2020 and March 25, 2020, respectively) meet the SIP requirements of the Act. The EPA is proposing to approve Part 219 and Part 222. The EPA is also proposing to approve attendant revisions to Part 200, Section 200.9, "General Provisions, Reference material. These revisions meet the requirement of the Act and EPA's regulations, and are consistent with EPA guidance and policy. EPA is taking this action pursuant to Section 110 and Part D of the Act and EPA's regulations.

VIII. Incorporation by Reference

In this document, the EPA is also proposing to incorporate by reference NYSDEC rules discussed in sections IV and V of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made and will continue to make these materials available through the docket for this action, EPA-R02-OAR-2021-0572, at <https://regulations.gov>, and at the EPA Region II Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. 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. See 42 U.S.C. 7410(k); see also 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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), and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501);

- 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 CAA; 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, 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

any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Incorporation by Reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: January 24, 2022.

Lisa F. Garcia,

Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0945; FRL–9487–01–R1]

Air Plan Approval; New Hampshire; Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This submission revises previously approved transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision continues to rely on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0945 at <https://www.regulations.gov>, or via email to rackauskas.eric@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email rackauskas.eric@epa.gov.

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

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I. Background and Purpose

On September 9, 2021, the New Hampshire Air Resources Division (ARD) submitted a revision to its State Implementation Plan (SIP) consisting of amendments to Env–A 1500, *Conformity*. This revision consists of minor administrative language changes, updated definitions and references to Federal rules, and clarifications to roles

and responsibilities for Federal, state, and municipal partners.

a. What is Transportation Conformity?

Transportation Conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally-supported highway, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Clean Air Act, for the following transportation related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards. The transportation conformity regulation is found in 40 CFR part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

b. What is General Conformity?

General Conformity is a requirement of section 176(c) of the Clean Air Act (CAA) Amendments of 1990. General Conformity is a safeguard that no action by the Federal government interferes with a SIP's protection of the National Ambient Air Quality Standards (NAAQS). Under General Conformity, any action by the Federal government cannot: Cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. The general conformity regulation is found in 40 CFR part 93, subpart B and provisions related to conformity SIPs are found in 40 CFR 51.851.

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies (75