

“2015 8-Hour Ozone National Ambient Air Quality Standard Nonattainment New Source Review Requirements” at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**  
\* \* \* \* \*  
(e) \* \* \*  
(1) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2015 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	Pennsylvania's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area (includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties).	1/8/21; 8/23/21	10/3/22, Insert <b>Federal Register</b> citation].	

[FR Doc. 2022-21252 Filed 9-30-22; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2021-0483; FRL-9158-02-R2]

### Approval of Air Quality Implementation Plans; New York; Revisions to Architectural and Industrial Maintenance Coatings

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The final SIP revision consists of amendments to regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for architectural and industrial maintenance coatings. The effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

**DATES:** This final rule is effective on November 2, 2022.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2021-0483. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Linda Longo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3565, or by email at [longo.linda@epa.gov](mailto:longo.linda@epa.gov).

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##### I. What is the background for this action?

On August 11, 2022 (87 FR 49570), the EPA published a notice of proposed rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on October 15, 2020, for purposes of revising title 6 of the NYCRR, part 205, “Architectural and Industrial Maintenance Coatings.” The EPA's evaluation recognizes that the SIP revision is consistent with the Ozone Transport Commission Model Rule for AIM coating categories and will help the State attain the National Ambient Air Quality Standards (NAAQS) by improving air quality through reduced VOC emissions and promoting regional AIM coating consistency. The specific details of New York's SIP revision submittal and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's August 11, 2022,

proposed rulemaking (87 FR 49570). The attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced material,” for 6 NYCRR part 205 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

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

The EPA provided a 30-day review and comment period for the August 11, 2022, proposed rule. The comment period ended on September 12, 2022. We received no comments on the EPA's action.

##### III. What action is the EPA taking?

The EPA is approving New York's revisions to the New York SIP and amendment to 6 NYCRR part 205, “Architectural and Industrial Maintenance Coatings,” with a State effective date of January 11, 2022. Specifically, this rulemaking will reduce VOC emissions for 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories without relaxation of the regulation, and narrow the exemption previously provided to coatings sold in one-liter (or quart-size) containers, referred to as the “quart exemption.” The revisions will help the State to comply with Federal requirements pertaining to attainment and maintenance of the ozone NAAQS.

##### IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the 6 NYCRR part 205, “Architectural and Industrial Maintenance Coatings,” regulations described in the amendments to 40 CFR part 52 as discussed in section III of this preamble.

The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

**VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. 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 December 2, 2022. 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, Ozone, Volatile organic compounds.

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

**Lisa Garcia,**  
*Regional Administrator, Region 2.*

For the reasons set forth in the preamble, 40 CFR part 52 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. In § 52.1670, paragraph (c) is amended in the table by revising the entry for "Title 6, Part 205" to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS**

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Title 6, Part 205 .....	Architectural and Maintenance Coatings.	Industrial Maintenance	1/11/2022	10/3/2022 • EPA approval finalized at [insert Federal Register citation].
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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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[FR Doc. 2022-21355 Filed 9-30-22; 8:45 am]

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52****[EPA-R06-OAR-2020-0343; FRL-10200-01-R6]****Air Plan Approval; Texas; Clean Air  
Act Requirements for Nonattainment  
New Source Review****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of the State Implementation Plan (SIP) revisions submitted to the EPA by the State of Texas (“the State”) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The SIP revisions being approved describe how CAA requirements for Nonattainment New Source Review (NNSR) are met in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) serious ozone nonattainment areas.

**DATES:** This rule is effective on November 2, 2022.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID EPA-R06-OAR-2020-0343. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” means the EPA.

**I. Background**

The background for this action is discussed in detail in our March 1, 2021, proposal (86 FR 11913). In that document we proposed to approve portions of two revisions to the Texas SIP submitted to the EPA on May 13, 2020, that describe how CAA requirements for enhanced vehicle inspection and maintenance (I/M) and NNSR are met in the DFW and HGB serious ozone nonattainment areas for the 2008 ozone NAAQS.

Our March 2021 proposal provided a detailed description of the revisions and the rationale for the EPA’s proposed actions, together with a discussion of the opportunity to comment. The public comment period for our March 2021 proposal action closed on March 31, 2021. We received comments during the public comment period from two sources: Earthjustice, on behalf of Achieving Community Tasks Successfully, Coalition of Community Organizations, Downwinders at Risk, Sierra Club, Texas Environmental Justice Advocacy Services, and itself, together with Caring for Pasadena Communities; and Air Law for All (ALFA), on behalf of the Center for Biological Diversity and the Center for Environmental Health.<sup>1</sup> The comments received are available for review in the docket for this rulemaking. The EPA is not finalizing the proposed approval of revisions that address the CAA requirements for vehicle I/M at this time. Those revisions will be addressed in a separate rulemaking. Our responses to the comments addressing NNSR follow.

**II. Response to Comments**

*Comment:* Commenters assert that the proposed rule relies on the provisions of the Texas Administrative Code which require new or modified major sources of ozone precursors in ozone nonattainment areas to procure emission offsets for their emission increases through the state’s Emission Credit Banking and Trading program. According to the Commenters, these provisions authorize inter-precursor trading (IPT) of NO<sub>x</sub> and VOC emissions which was vacated by the United States Court of Appeals for the District of Columbia Circuit on January 29, 2021. The commenters also argued that EPA’s approval of an inter-precursor trade is presumed unless the EPA disapproves the trade during its comment period, according to TCEQ guidance memorandum.

<sup>1</sup> Henceforth, we refer to Earthjustice and ALFA as “commenters.”

*Response:* The commenter correctly points out that the D.C. Circuit (the court) vacated the portion of the EPA’s NNSR regulation at 40 CFR 51.165 that allows IPT to meet the offset requirements for ozone. Following the court’s decision, the EPA notified the TCEQ in a letter dated June 17, 2021, that the EPA would no longer approve any IPT trades under the previously approved Texas SIP rules based on the court decision. In a response to the EPA dated June 25, 2021, the TCEQ confirmed that its NNSR IPT provisions cannot function without the EPA’s prior approval of each trade, and that the TCEQ has not approved any IPT request in the past without prior approval from the EPA.<sup>2</sup>

The TCEQ also confirmed that without the IPT provisions, its regulations continue to meet the NNSR program requirements at 40 CFR 51.165. EPA agrees that, without the IPT provisions, the Texas SIP regulations meet the CAA’s NNSR requirements. The EPA-approved Texas SIP already includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). Based on EPA’s review of Texas SIP regulations for the NNSR program requirements for serious ozone nonattainment areas, we are approving this portion of the SIP revision.

The EPA does not agree with the commenters that the EPA’s approval of an IPT can be presumed under the Texas SIP unless the EPA disapproved the trade during the comment period. Texas has not submitted, and the EPA has not approved the State’s guidance document, described by the commenters, as part of the Texas SIP. Nothing in the previously approved Texas regulations establishes a presumption of the EPA’s approval of an IPT if the EPA does not communicate its disapproval during a relevant public notice and comment period.

In addition, the EPA’s commitment that it will not approve IPT for ozone because of the court’s decision is sufficient to render the Texas IPT provisions inoperative for ozone. Texas has confirmed that IPT is not permitted under its regulation without prior EPA approval of a trade. Finally, we would work with Texas to get the inoperative IPT provisions removed in future SIP revisions.

As stated in our proposal, NNSR permitting program requirements

<sup>2</sup> The text of each letter is available in the docket to this action.