



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2022-0648, FRL-11358-01-R2]

Approval and Promulgation of Implementation Plans; New York; Elements of the 2008 and 2015 Ozone National Air Quality Standards

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 York for purposes of certifying and meeting the requirements for Reasonably Available Control Technology (RACT) for the Serious classification of the 2008 and Moderate classification of the 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS). The EPA is also proposing to approve that this SIP revision fulfills SIP requirements pertaining to the Ozone Transport Region (OTR) for the 2015 Ozone NAAQS. The EPA is proposing to approve the demonstration portion of the comprehensive SIP revision submitted by New York that certify that the State has satisfied the requirements for an Ozone nonattainment new source review program, certify that the State has satisfied the requirements for a nonattainment emission inventory, and certify that the State has satisfied the requirements for clean fuels for fleets. The EPA is also proposing to approve New York's reasonable further progress plans and motor vehicle emissions budgets for both the Moderate and Serious classifications of the 2008 Ozone NAAQS.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-

OAR-2022-0648 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, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

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

Table of Contents:

- I. What did New York submit?
- II. Background
- III. Summary and Evaluation of New York’s SIP submittals
 - a. RACT certifications
 - b. Additional certifications
- IV. EPA’s proposed action
- V. Statutory and Executive Order Reviews

I. What did New York submit?

On January 29, 2021, New York submitted a State implementation plan (SIP) revision for purposes of meeting the requirement for Reasonably Available Control

Technology (RACT)¹ for the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS or standard) in New York's portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) nonattainment area (also referred to as the New York Metro Area or NYMA) for the Serious classification.² The submittal was also meant to satisfy New York's requirement for RACT for the 2015 NAAQS in the NYMA and the requirements for RACT for the 2015 NAAQS throughout the State for New York's commitment to meet RACT within the Ozone Transport Region (OTR). New York also submitted a comprehensive SIP revision on November 29, 2021, which includes the reasonable further progress plan and motor vehicle emissions budgets (MVEB or Budgets) for the 2008 Ozone Serious classification of NYMA, certifying that the State has satisfied the requirements for an Ozone nonattainment new source review (NNSR) program, certifying that the State has satisfied the requirements for a nonattainment emission inventory, and certifying that the State has satisfied the requirements for clean fuels for fleets. In addition, New York also submitted a comprehensive SIP revision on November 13, 2017. Within that submittal, New York included the reasonable further progress plan and MVEB for the 2008 Ozone Moderate classification of the NYMA.

II. Background

In 2008, EPA revised the health-based NAAQS for Ozone, setting it at 0.075 parts per million (ppm) averaged over an 8-hour time frame. *See* 73 FR 16435 (March 27, 2008). The EPA determined that the revised 8-hour standard would be more protective of

¹ The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

² In New York's January 29, 2021 submittal, the State certifies that an EPA-approved emission statement program satisfies the CAA Section 182(a)(3)(B) SIP Requirement for the 2015 8-hour Ozone NAAQS. New York's certification for its emission statement program requirement for the 2015 8-hour Ozone NAAQS will be addressed under a separate future rulemaking and is not addressed within this proposal.

human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma. *See id.*

On April 30, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour Ozone Standard. *See* 77 FR 30088 (May 21, 2012). This action became effective on July 20, 2012. The two 8-hour Ozone marginal nonattainment areas located in New York State are the New York portion of the NYMA and the Jamestown nonattainment area. The remainder of New York State was designated as unclassifiable/attainment. 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.³ 40 CFR 81.333. The Jamestown nonattainment area is composed of Chautauqua County. *See id.* In 2016, the EPA determined that Jamestown attained the 2008 Ozone Standard by the July 20, 2015, attainment date and that the NYMA nonattainment area did not attain the 2008 Ozone Standard by the applicable attainment date and was reclassified from a marginal to a moderate nonattainment area. *See* 81 FR 26697 (May 4, 2016).⁴ State attainment plans for Moderate nonattainment areas were due by January 1, 2017. *See id.* Since the NYMA was reclassified to a Moderate nonattainment area, New York, on November 13, 2017, submitted a comprehensive SIP revision, including an attainment demonstration and reasonable further progress plan among other SIP required elements, related to the 2008 8-hour Ozone standard for the Moderate classification. Subsequently, the NYMA Moderate nonattainment area also failed to meet the Moderate area attainment date. Therefore, on August 23, 2019, EPA published a final rule that

³ Information pertaining to areas of Indian country is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status and makes no determination of Indian country boundaries at 77 FR 30088 (May 21, 2012).

⁴ In 2019 the NY-NJ-CT nonattainment area was reclassified to serious nonattainment. 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for RACT measures not tied to attainment is July 20, 2021. 84 FR 44238.

reclassified the NYMA, and other State's nonattainment areas, from Moderate to Serious. *See* 84 FR 44238 (August 23, 2019). Because the NYMA nonattainment area also failed to meet the Serious area attainment date, on September 15, 2022, the EPA published a final rule that reclassified the NYMA, along with other State's nonattainment area, from Serious to Severe. *See* 87 FR 60926 (October 7, 2022). This reclassification to Severe resulted in a revised attainment date for the NYMA of July 20, 2027. *See id.* RACT requirements tied to the Severe classification are due on May 7, 2024. *See id.*

The counties in the New York portion of the NYMA (and part of Orange County) were previously classified under the 1979 1-hour Ozone NAAQS as Severe, requiring RACT, while the remaining counties in the State were subject to RACT as part of the Moderate classification or as part of the Ozone Transport Region (OTR). *See* 77 FR 36165.⁵ Under the 2008 8-hour Ozone Standard, in areas classified as Moderate or located in the OTR (which includes all of New York State), a RACT determination is required for major stationary sources that emit or have the potential to emit 50 tons per year for VOC and 100 tons per year for NO_x. *See* 87 FR 21825 (April 13, 2022). As required by the anti-backsliding provisions of the CAA, for purposes of the RACT analysis for the 2008 Ozone standard, New York retained the 1-hour Ozone plan emission threshold of 25 tons per year or more for either NO_x or VOC for major sources in the New York portion of NYMA and portions of Orange County that were classified as Severe under the 1979 1-hour standard. *See* 40 CFR part 51.905.

Sections 182(b)(2) of the CAA require States to implement RACT in areas classified as Moderate (and higher) nonattainment for Ozone, while section 184(b)(1)(B) of the CAA requires VOC RACT in States located in the OTR, and section 182(f) requires NO_x RACT. RACT must be implemented for all major VOC and NO_x emission

⁵ CAA Section 184(a) established a single ozone transport region (OTR) comprising all or part of 12 eastern States and the District of Columbia.

sources and for all sources covered by a control technique guideline (CTG). A CTG is a document issued by the EPA which provides recommendations to inform State, local, and Tribal air agencies as to what constitutes RACT for a specific VOC source category. States must submit rules, or negative declarations when the State has no such sources, for CTG source categories. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NO_x control requirements. RACT must be imposed on major sources of NO_x, and some of those major sources may be within a sector covered by an ACT document.

On March 6, 2015, the EPA published a final rule that outlines the obligations that areas found to be in nonattainment of the 2008 Ozone NAAQS need to address (2008 Ozone Implementation Rule). *See* 80 FR 12264. This rule contains, among other things, a description of the EPA's expectations for States with RACT obligations. The 2008 Ozone Implementation Rule provides that States could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in the SIP, that were approved by the EPA under a prior Ozone NAAQS, represent adequate RACT control levels for attainment of the 2008 Ozone NAAQS, or a combination of these two approaches. In addition, a State must submit a negative declaration in instances where there are no sources covered by a given CTG. The 2008 Ozone Implementation Rule requires that States with nonattainment areas were required to submit RACT SIPs to EPA within two years from the effective date of nonattainment designation, which for the areas at issue here was July 20, 2014.

Regarding the 2015 Ozone NAAQS, on June 4, 2018, EPA published a final rule establishing designations and classifications for this standard for most areas of the country, including New York. *See* 83 FR 25776 (June 4, 2018). This final rule created a Moderate nonattainment area within the NYMA which includes, within New York, the

five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. Additionally, on December 6, 2018, EPA published a final rule outlining requirements for States to follow as they implement the 2015 Ozone NAAQS (2015 Ozone Implementation Rule). (See 83 FR 62998, December 6, 2018). The rule contains RACT and NNSR requirements similar to those outlined within the 2008 Ozone Implementation Rule, although the discretionary inter-pollutant trading program provided for within the NNSR portion of the rule was subsequently voided.

Regarding NNSR, the minimum SIP requirements for NNSR permitting programs for the 2008 and the 2015 Ozone NAAQS are located in 40 CFR 51.165. These NNSR program requirements include those promulgated in the “Phase 2 Rule” implementing the 1997 8-hour Ozone NAAQS (See 70 FR 71612, November 29, 2005) and the 2008 Ozone Implementation Rule. Additionally, although the 2015 Ozone Implementation Rule included a provision to explicitly allow for inter-pollutant trading for meeting the emissions offset requirement for ozone, this provision was subsequently vacated.⁶ Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that:

- Set major source thresholds for NO_x and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i) through (iv) and (a)(1)(iv)(A)(2);
- Classify physical changes at a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3);
- Consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E);
- Consider increases of VOC emissions in extreme ozone nonattainment areas as

⁶ Sierra Club v. EPA, 985 F.3d 1055 (D.C. Cir. 2021).

significant net emissions increases and major modifications for ozone pursuant to 40 CFR

51.165(a)(1)(v)(F);

- Set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E);
- Contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1) and (2);
- Provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and
- Set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(i) through (iii) (renumbered as (a)(9)(ii) through (iv) under the 2008 Ozone Implementation Rule).

Additionally, pursuant to the 2008 Ozone Implementation Rule, areas designated as nonattainment for that standard that also remain nonattainment for the 1997 Ozone Standard must satisfy the anti-backsliding requirements of 40 CFR 51.1105.

III. Summary and Evaluation of New York's SIP submittals

a. RACT certifications

On January 29, 2021, New York submitted a determination that its regulatory framework for sources meets the criteria for RACT for purposes of the 2015 Ozone NAAQS. The submittal also contained a certification that the State's RACT requirements are sufficient to comprise RACT for the area's Serious classification for the 2008 Ozone NAAQS. EPA approved New York's statewide 2008 NAAQS RACT SIP submission for requirements associated with the Moderate area classification and the OTR on December 12, 2017, except the Agency conditionally approved New York's submission with respect to sources covered by the industrial cleaning solvents CTG. *See* 82 FR 58342. As of May 13, 2020, New York had a fully approved RACT SIP for purposes of the Moderate area classification and OTR requirements associated with the 2008 Ozone NAAQS. *See* 85 FR 28490. New York's RACT submittal notes that its prior designation as a nonattainment

area for the New York portion of the NYMA for the previous ozone standards resulted in the adoption of stringent controls for major sources of VOC and NO_x, including RACT level controls. New York's major source applicability threshold for both VOC and NO_x have been maintained at 50 tons per year throughout the State and at 25 tons per year in the New York portion of the NYMA, due to anti-backsliding and the NYMA being designated as Severe for the one-hour Ozone Standard (See 56 FR 56694, November 6, 1991) where the threshold is 25 tons per year. In accordance with the 2008 and 2015 Ozone Implementation Rules, much of New York's submittal consists of a review of RACT controls adopted under previous ozone standards and an indication of whether those previously adopted controls still represent RACT for the 2008 and 2015 Ozone NAAQS. Additionally, New York notes that as a member state of the OTR, it works with the Ozone Transport Commission to identify and adopt, as deemed appropriate, regulations on additional VOC and NO_x categories beyond those for which EPA has issued CTGs or ACT documents.

Appendix A of New York's January 29, 2021, submission lists the CTGs and ACTs and corresponding New York RACT regulations that cover existing sources in New York. For major non-CTG sources, RACT compliance is enforced through the SIP approved provisions in 6 NYCRR Part 212, "Process Operations." On October 1, 2021, the EPA approved New York's revisions to Part 212 into the SIP to strengthen enforcement of New York's air pollution control regulations (*see* 86 FR 54375).

New York evaluated its existing RACT regulations and requirements and determined that these measures continue to constitute RACT for purposes of the 2008 Ozone NAAQS Serious classification, the 2015 Ozone NAAQS Moderate classification, and OTR requirements for the 2015 Ozone NAAQS. New York certified that its current regulations still comprise RACT for all major sources of NO_x/VOCs and all sources covered by CTGs where there is no negative declaration. In regard to NO_x RACT

regulations, New York certified that their following SIP approved regulations met the current requirements for RACT: Subpart 212-3, “Reasonably Available Control Technology for Major Facilities” (86 FR 54375, October 1, 2021), Subpart 212-4, “Control of Nitrogen Oxides for Hot Mix Asphalt Production Plants” (86 FR 54375, October 1, 2021), Part 214, “Byproduct Coke Oven Batteries” (71 FR 41163, July 20, 2006), Part 216, “Iron and/or Steel Processes” (71 FR 41163, July 20, 2006), Subpart 219-10, “Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx) at Municipal and Private Solid Waste Incineration Units ” (87 FR 33438, June 2, 2022), Subpart 220-1, “Portland Cement Plants” (78 FR 41846, July 12, 2013), Subpart 220-2, “Glass Plants” (conditional approval 78 FR 41846, July 12, 2013) and Subpart 227-2, “Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NOx)” (78 FR 41846, July 12, 2013).

In regard to VOC RACT regulations, New York certified that their following SIP approved regulations met the current requirements for RACT: Part 203, “Oil and Natural Gas Sector” (87 FR 52337, August 25, 2022), Subpart 212-3, “Reasonably Available Control Technology for Major Facilities” (86 FR 54375, October 1, 2021), Part 226, “Solvent Cleaning Processes and Industrial Cleaning Solvents” (85 FR 28490, May 13, 2020), Part 228, “Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers” (79 FR 12082, March 4, 2014), Part 229, “Petroleum and Volatile Organic Liquid Storage and Transfer” (62 FR 67006, December 23, 1997), Part 230, “Gasoline Dispensing Sites and Transport Vehicles” (63 FR 23668, April 30, 1998), Part 233, “Pharmaceutical and Cosmetic Manufacturing Processes” (62 FR 67006, December 23, 1997), Part 234, “Graphic Arts” (77 FR 13974, March 8, 2012). Within New York’s January 29, 2021, SIP revision, the State noted that it was in the process of revising Part 230 to incorporate Federal standards for gasoline dispensing facilities pursuant to 40 CFR

Subpart CCCCCC. This regulatory update was submitted to the EPA on March 3, 2021 and was approved into New York's SIP on February 9, 2023. *See* 88 FR 8371.

In regard to negative declarations, New York reviewed the CTG and ACT categories and determined that their previously approved negative declarations remain valid. Based on the emission inventory and emission statements for New York, the State certified that there are no sources located within the State for the following six CTGs: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. In New York's January 29, 2021, RACT submittal for the Serious classification of the 2008 Ozone standard, Moderate classification for the 2015 Ozone Standard, and OTR requirements related to the 2015 Ozone NAAQS New York recertifies that this previously approved negative declaration for the CTGs listed above remains valid. In this proposed action, the EPA is proposing that the State's negative declaration for the six CTGs listed above remain valid and satisfies the requirements for the 2008 Ozone NAAQS Serious classification, the 2015 Ozone standard Moderate classification and requirements associated with the OTR for the 2015 Ozone NAAQS (82 FR 58342, December 12, 2017); 40 CFR 52.1683 (a) and (b).

Regarding source specific RACT determinations, New York submits certain source specific RACT determinations to EPA as SIP revisions. In instances where a facility is unable to meet the relevant categorical RACT limit due to technical or economic infeasibility, an alternative RACT limit, also called a variance, is agreed to by DEC and the facility owner. Some regulations (e.g., Part 220, "Portland Cement Plants and Glass Plants") do not define categorical RACT limits due to the uniqueness of each facility; in these cases, each regulated facility performs a complete RACT analysis from

which a facility-specific emission limit is established. A case-by-case RACT analysis may also be required for sources that are not in a source category covered by an existing State RACT regulation or addressed by a CTG.

New York has periodically submitted source specific RACT determinations for multiple facilities under a bundled SIP submittal approach to EPA. Previous bundles were submitted to the EPA in 2008, 2010, and 2013. This included 34 RACT determinations bundled into one submittal on September 16, 2008, and 15 RACT determinations bundled into one submittal on August 30, 2010, for various regulated RACT rules (e.g., Part 212-3, “RACT for Major Facilities,” and Part 220, “Portland Cement Plants and Glass Plants”). In addition, on December 18, 2013, New York submitted a bundle of six RACT determinations for Portland cement plants and glass plants regulated under Part 220. On May 7, 2020, New York withdrew 14 previously submitted RACT determinations because the facilities are no longer in operation or no longer need SIP approval due to changes in operations. EPA Region 2 continues to coordinate with NYSDEC to address the submittal status of the remaining source specific SIPs. Once submitted, these source specific SIPs will be addressed in future separate actions. Appendix B of New York’s January 29, 2021, submittal includes a list of source specific RACT determinations that have been submitted to EPA; Appendix C of the submittal contains correspondence from EPA dated May 21, 2020 regarding the latest developments in addressing the source specific SIP submittals.

We have reviewed New York’s RACT certification demonstration and propose to determine that the State’s regulatory requirements for VOC and NO_x emissions from major sources accomplish a RACT level of control for both pollutants. Regarding the CTG and ACT categories, New York has reviewed RACT controls adopted for previous Ozone standards and the EPA agrees with the State’s evaluation that those previously adopted controls still represent RACT for the Serious classification of the 2008 Ozone

Standard, the Moderate classification of the 2015 Ozone Standard, and requirements associated with the OTR for the 2015 Ozone NAAQS. Also, the SIP-approved New York RACT rules have more stringent emission limits and/or lower thresholds of applicability than the recommendations contained in the CTG and ACT documents. Since we agree that the regulations which New York has cited as meeting RACT do conform with RACT for the 2015 and 2008 Ozone standards, we propose approval of New York's RACT certification SIP revision requests dated January 29, 2021, and November 29, 2021.

b. Additional planning elements and certifications

New York's November 13, 2017, and November 29, 2021, SIP submissions also included additional certifications and planning elements as part of the comprehensive demonstrations. These include reasonable further progress and MVEB for the 2008 moderate and serious ozone classifications, a certification for an ozone NNSR program, a certification for a nonattainment emission inventory, and a certification that the State has satisfied the requirements for clean fuels for fleets.

Emission Inventory

CAA section 172(c)(3) requires that each SIP include a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area..." by requiring an accounting of actual emissions from all sources of the relevant pollutants in the area. This section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. For the 2008 Ozone NAAQS, EPA's March 6, 2015, implementation rule recommended 2011 as a baseline year from which emission reductions used to meet RFP requirements are creditable. *See* 80 FR 12263.

On November 29, 2021, NYSDEC certified that the previously submitted 2011 base year emission inventory is up-to-date and satisfies the requirements for the 2008

Ozone NAAQS for the Serious classification. On November 13, 2017, New York submitted to the EPA as a SIP revision request an emission inventory of ozone precursors for 2011.⁷ The inventory was submitted to meet the CAA Section 182(a)(3)(A) obligation to develop a base year inventory and was also used as the baseline year in the State's 2008 Ozone Moderate and Serious RFP plans which are described elsewhere in this proposal. The inventories include emission estimates in the form of ozone season day (OSD) emissions in tons per summer day. The OSD emissions are also adjusted for various types of stationary and mobile source categories based on their activity level during the summer ozone season. The ozone emission inventory catalogs NO_x and VOC emissions because these pollutants are precursors to ozone formation. New York's 2011 emissions inventory contains emission estimates for the nine counties in the NYMA and contains emission estimates summed statewide.

The specific details of New York's 2011 emission inventory and the rationale for the EPA's approval action are explained in the October 1, 2021, final rulemaking action. For this detailed information, the reader is referred to the EPA's rulemaking action approving New York's 2011 Emission Inventory. *See* 86 FR 54377. In that action, the EPA determined that New York's emission inventory is based on the most current and accurate information available to the State at the time it was being developed. Additionally, the inventories comprehensively address all source categories in New York's nonattainment areas and were developed consistent with the relevant EPA inventory guidance. For those reasons, the EPA approved the 2011 baseline emission inventories into New York's SIP as meeting the requirements of CAA Section 172(c)(3).

⁷ On October 1, 2021, The EPA approved revisions to the New York SIP which included the 2011 calendar year ozone season daily and annual ozone precursor emission inventories for CO, NO_x, and VOC for the NYMA portion of New York-New Jersey- Long Island, NY-NJ-CT, serious nonattainment area, and for the Jamestown marginal nonattainment area. In addition, the EPA approved the 2011 calendar year ozone emissions inventory that was developed statewide for New York. The pollutants included in the inventory are annual emissions for CO, NO_x, and VOC. *See* 86 FR 54377.

Since we agree that New York’s 2011 base year inventory is consistent with the ozone base year inventory reporting requirements based on EPA guidance, we are proposing to approve New York’s certification of its 2011 calendar year emission inventory to fully meets the requirements of the CAA for the 2008 8-hour Ozone NAAQS Serious classification.

Table 1 shows the NYMA summary of 2011 OSD emissions, in tons per day, by source category.

Table 1 – Emissions Inventory summary for NYMA nonattainment area [tons/ozone season day]

Source	New York Portion of NY-NJ-CT area	
	NO _x	VOC
Point	344.88	11.26
Non-Point (Area)	52.49	301.11
Nonroad	155.07	96.88
Onroad	205.87	104.46
Biogenic	1.35	191.15
Total	759.65	704.86

Reasonable Further Progress

Section 182(b)(1) of the CAA and the EPA's 2008 Ozone Implementation Rule requires that State’s submit a reasonable further progress (RFP) demonstration for each 8-hour ozone nonattainment area designated moderate and above, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO_x from a baseline emissions inventory. Section 182(b)(1) of the CAA requires a State’s RFP to demonstrate a 15% reduction in VOC emissions before the more general RFP requirements of section 172(c)(2) of the CAA apply, which permits a combination of VOC and NO_x emission reductions to show RFP.

The EPA’s 2008 Ozone Implementation Rule also finalized that 2008 nonattainment areas that have previously met the CAA requirement for a 15% ROP VOC reduction plan for the entire area are not required to fulfill that requirement again.

Instead, for purposes of the 1997 Ozone NAAQS and for the 2008 Ozone NAAQS, the EPA interpreted the RFP requirement of CAA section 172(c)(2) to require an area classified as Moderate to achieve an average 3 percent annual reduction in VOC and/or NO_x emissions for the first 6 years following the baseline.⁸ For Serious and above areas, section 182(c)(2)(B) requires an additional 3% per year reduction in VOC emissions, averaged over consecutive 3-year periods until the attainment date.⁹ New York has previously met the 15% RFP for VOC, due to nonattainment obligations it had under the 1997 8-hour Ozone standard (*see* 86 FR 49249; September 2, 2021). Therefore, for purposes of the 2008 Ozone standard, New York submitted RFP demonstrations for its moderate and serious nonattainment areas showing VOC and NO_x emission reductions greater than the 18% requirement following six years after the 2011 base year inventory (between 2012-2017) and demonstrated a 27% reduction by the Serious classification attainment date, July 20, 2021. Note that we are only proposing action on both RFP plans for the New York portion of the NYMA.

In New York's November 13, 2017, submission, NYSDEC demonstrated that RFP was achieved for the moderate classification between the 2011 baseline year and the 2017 target year by showing that NO_x emissions declined by 28.01%, and VOC emissions by 6.70%, within the NYMA nonattainment area. New York updated its 2011 emission estimates for use within the RFP baseline inventory by using the most recently available at the time version of EPA's MOVES model, MOVES 2014a, for calculation of on-road and non-road mobile source emissions. New York also accounted for Emission Reduction Credits (ERCs) within its RFP analysis because there are emissions offsets available for facilities to use when constructing or modifying an emission source subject to New Source Review. New York relied on the emission projection work it had

⁸ Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements." Final Rule. Published March 6, 2015; effective April 6, 2015. 80 FR 12271.

⁹ *See Id.*

coordinated and submitted to the Mid-Atlantic Regional Air Management Association for their effort to develop a 2017 modeling platform. The projections of emissions from electrical generating units (EGUs) were conducted using the Eastern Regional Technical Advisory Committee (ERTAC). The ERTAC projection tool uses 2011 emissions data from EPA’s Clean Air Market Division and growth factors developed from the U.S. Department of Energy’s Energy Information Administration (EIA) data and other sources to create a 2017 emission inventory for EGUs. EPA finds that the ERTAC EGU emissions forecasts produce reasonable results for facilities within the State.

Table 2 below contains a summary of the 2011 RFP baseline inventory, and 2017 projected, controlled emissions demonstrating the 6.70% VOC and 28.01% NOx emission reductions for the New York portion of the NY-NJ-CT nonattainment area.¹⁰ Although NYSDEC’s modeling demonstration illustrates that the NYMA did not meet the moderate area attainment deadline of July 20, 2018, New York’s RFP analysis for the NYMA moderate nonattainment area showed that projected, controlled VOC and NOx emission in 2017 were well below the emission target levels. Therefore, the EPA is proposing to approve New York’s RFP for the moderate classification since it successfully meets the RFP requirement under CAA section 172(c)(2).

Table 2 – Summary of RFP Calculations for NYMA for 2008 Ozone Moderate Classification

Description	NOx emissions (tons/ozone season day)	VOC Emissions (tons/ozone season day)
<i>RFP Baseline Inventory (2011):</i> NY portion of NY-NJ-CT area	770.4	516.04
<i>2017 Projected, controlled</i>	554.58	481.48

¹⁰ In New York’s calculation for RFP of the 2008 Ozone Moderate classification, biogenic emissions were removed from the base year inventory and rule effectiveness of Point sources emissions for both EGUs and non-EGUs were factored in.

<i>emissions: NY portion of NY-NJ- CT area</i>		
--	--	--

As mentioned previously, the RFP requirement in CAA section 182(c)(2)(B) require areas classified as Serious or higher to achieve an average 3% annual reduction for the first 6 years following the baseline year, and also requires Serious areas to demonstrate an additional 3% per year reduction in VOC emissions, averaged over consecutive 3-year periods until the attainment date.¹¹ Since the attainment date for the Serious classification was on July 20, 2021, this requires Serious areas located within New York to demonstrate 27% percent reductions by the end of the nine-year period (2011-2020) regardless of whether the area attains the NAAQS. In New York’s November 29, 2021, submission, NYSDEC demonstrated that RFP was achieved for the Serious classification between the 2011 baseline year and 2020 target year by showing that the 27% reduction requirement was achieved through a combination of NOx and VOC emission reductions through 2020.

Table 3 below contains a summary of the 2011 RFP baseline inventory, and 2020 projected, controlled emissions demonstrating that VOC emissions were reduced by 17.76% and NOx emission reduced by 30.41% within the New York portion of the NY-NJ-CT nonattainment area.¹² Because RFP requirements for the NYMA Serious nonattainment area can be satisfied with reductions in either NOx or VOC emissions, New York was able to demonstrate a reduction emission surplus from the 27% requirement. Although NYSDEC’s modeling demonstration and 2020 Design Values (DVs) illustrated that the NYMA did not meet the serious area attainment deadline of

¹¹ Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements.” Final Rule. Published March 6, 2015; effective April 6, 2015. 80 FR 12271.

¹² In New York’s calculation for RFP of the 2008 Ozone Serious classification, biogenic emissions were removed from the base year inventory and rule effectiveness of Point sources emissions for both EGUs and non-EGUs were factored in.

July 20, 2021, New York’s RFP calculations for the NYMA serious nonattainment area showed that the 27% reduction requirement was achieved through a combination of NOx and VOC emission reductions through 2020. Therefore, the EPA is proposing to approve New York’s RFP for the Serious classification since it successfully meets the RFP requirement under CAA section 182(c)(2)(B) and 40 CFR 51.1110.

Table 3 – Summary of RFP Calculations for NYMA for 2008 Ozone Serious Classification

Description	NOx emissions (tons/summer day)	VOC Emissions (tons/summer day)
<i>RFP Baseline Inventory (2011): NY portion of NY-NJ-CT area</i>	770.4	516.04
<i>2020 Projected, controlled emissions: NY portion of NY-NJ-CT area</i>	536.14	424.40

Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means conformity to an implementation plan’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the NAAQS, and that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(A) and (B)). The EPA’s conformity rule at 40 CFR Part 93, subpart A requires that transportation plans, programs and projects conform to SIPs, and establishes the criteria and procedures for determining whether or not they conform. To accomplish its purpose, the conformity rule requires a demonstration that emissions from a metropolitan planning organization’s regional transportation plan and transportation

improvement program are consistent and do not exceed the MVEB contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. The MVEB are defined in 40 CFR 93.101 as the level of mobile source emissions of a pollutant, of the total allowable emissions, defined in the SIP for a certain date, for the purpose of demonstrating attainment or maintenance of the NAAQS or for meeting reasonable further progress milestones.¹³

In New York’s November 13, 2017 comprehensive SIP submittal, the State established the 2017 MVEB for VOCs and NOx within the New York portion of the NY-NJ-CT nonattainment area for the 2008 8-hour Moderate classification. In New York’s submittal, the State clarifies that the 2017 MVEB is a projection from the 2011 base year inventory, and that the 2017 VOC MVEB excludes emissions from refueling. Table 4 lists the New York 2017 MVEB.

Table 4 – MVEB in New York’s 2008 Ozone Moderate RFP Plan

Description	NOx (tons/summer day)	VOC (tons/summer day)
<i>2017 8-Hour Ozone Motor Vehicle Emission Budgets:</i> NY portion of NY-NJ-CT area	117.21	65.69

On April 19, 2018, the EPA issued a letter to New York in which we stated that the Budgets for the New York portion of the NY-NJ-CT area were adequate for use in transportation conformity determinations. Additionally, the EPA published an announcement of this adequacy finding in the *Federal Register* on June 8, 2018. *See* 83 FR 26598. In this action the EPA is proposing to approve the 2008 Ozone Moderate RFP on-road MVEB established for the New York portion of the NY-NJ-CT area. The EPA is

¹³ Further information concerning EPA’s interpretations regarding MVEBs can be found in the preamble to EPA’s November 24, 1993 transportation conformity rule. *See* 58 FR 62193-62196.

also proposing to approve these Budgets because EPA has now completed its review of the overall 2008 Ozone Moderate RFP plan which demonstrates the required percent reductions needed for the plan approval.

Also, in New York’s November 29, 2021 comprehensive SIP submittal, the State established the 2020 MVEB for VOCs and NOx within the New York portion of the NY-NJ-CT nonattainment area for the 2008 8-hour Serious classification. In New York’s submittal, the State clarifies that the 2020 MVEB is a projection from the 2011 base year inventory, and that the 2020 VOC MVEB excludes emissions from refueling. Table 5 lists the New York 2020 MVEB.

Table 5 – MVEB in New York’s 2008 Ozone Moderate RFP Plan

Description	NOx (tons/summer day)	VOC (tons/summer day)
<i>2020 8-Hour Ozone Motor Vehicle Emission Budgets:</i> NY portion of NY-NJ-CT area	89.07	54.51

On July 26, 2022, the EPA issued a letter to New York in which we stated that the Budgets for the New York portion of the NY-NJ-CT area were adequate for use in transportation conformity determinations. Additionally, the EPA published an announcement of this adequacy finding in the *Federal Register* on November 23, 2022. See 87 FR 71632. In this action the EPA is proposing to approve the 2008 Ozone Serious RFP on-road MVEB established for the New York portion of the NY-NJ-CT area. The EPA is proposing to approve the 2020 MVEB established for the New York portion of the NY-NJ-CT nonattainment area since these Budgets are based on the 2011 base year emission inventory that is consistent with EPA guidance, as discussed in Section III.B. The EPA is also proposing to approve these Budgets because EPA has now completed its

review of the overall 2008 Ozone Serious RFP plan which demonstrates the required percent reductions needed for the plan approval.

Ozone nonattainment new source review (NNSR)

New York affirmed in its November 29, 2021, submittal that, because the State is located entirely in the OTR, regardless of the area's designation status, NNSR applies state-wide for emissions of ozone precursor pollutants, VOC and NO_x, for new major facilities or modifications to existing major or minor sources. New major facilities or modification to existing major or minor facilities in New York State are subject to the provisions of 6 NYCRR Part 231, "New Source Review for New and Modified Facilities." See 81 FR 95049 (December 27, 2016). Major-source pollutant thresholds are lower in the NYMA, however, due to the area's former Severe classification under the 1-hour Ozone NAAQS: 25 tons per year for VOC or NO_x, as opposed to 50 to 100 tons, respectively, throughout the rest of the State. The NYMA also has a lower significant source project threshold and significant net emission increase threshold, as well as a more stringent offset ratio for both precursors.

NNSR requires the application of Lowest Achievable Emission Rate which is more stringent than RACT. Furthermore, New York certified in its November 29, 2021 submittal that the State also relies upon Federal rules such as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) regulated under CAA section 112. NESHAPs establish the need to use Maximum Achievable Control Technology (MACT), which may be more stringent than RACT, to control hazardous air pollutants.

The EPA is proposing to approve New York's certification that NNSR applies state-wide for NO_x and VOC emissions from stationary sources and fully meets the requirements of the CAA for the 2008 8-hour Ozone NAAQS.

Clean Fuels for Fleets

Clean Air Act Section 182(c)(4) requires States with Ozone nonattainment areas classified as Serious or above with 1980 populations greater than 250,000 to submit a SIP revision to either “include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter” or to provide “a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter.” The Clean Fuel Fleets requirement was adopted as part of the 1990 CAA Amendments and was designed to improve air quality and introduce clean burning fuels into the market. CAA Sections 243 and 245 included numerical emissions standards for the Clean Fuel Fleets light- and heavy-duty vehicles that were intended to encourage innovation, encourage the purchase of cleaner fleet vehicles and reduce emissions for fleets of motor vehicles in ozone nonattainment areas classified as Serious or above as compared to conventionally fueled vehicles available at the time.¹⁴ With the implementation of Tier 3 light-duty standards (40 CFR part 86, Subpart S) and the continued implementation of current heavy-duty vehicle standards (40 CFR Part 1036), the 1990 CAA Amendments’ Clean Fuel Fleets standards became either less stringent than or equivalent to the standards that apply to vehicles and engines today. Because the statute continues to require Clean Fuel Fleets standards for State clean fuel vehicle programs in Serious and above ozone nonattainment areas, on June 29, 2021, the EPA revised the Clean Fuel Fleets requirements in 40 CFR Part 88, to provide compliance options to the where vehicles and engines certified to current standards would be deemed to comply with the Clean Fuel Fleets standards as Ultra Low-Emission Vehicles. *See* 86 FR 34308 (June 29, 2021). This approach enables States to address the Clean Fuel Fleets requirements by describing in a SIP that any new light- or heavy-duty vehicle purchased today are certified to current

¹⁴ CAA sections 241(5) “Definition of a Covered Fleet” and 246(b) “Phase-in Requirements” require that CFFPs apply to fleets of 10 or more vehicles that are capable of being centrally fueled.

standards under 40 CFR part 86 and part 1036 or by the California Air Resources Board (CARB) under its Low Emission Vehicle Program (LEV III) would be deemed to comply with the Clean Fuel Fleets standards as Ultra Low-Emission Vehicles.

New York affirmed in its November 29, 2021, submittal that the State has satisfied the requirements for clean fuels for fleets. New on-road motor vehicles sold in New York are subject to the provisions of 6 NYCRR Part 218, “Emission Standards for Motor Vehicle Engines.” Section 177 of the CAA permits States to adopt new motor vehicle emission standards that are identical to California’s. Therefore, in this already implemented measure, NYSDEC has incorporated the latest California emission standards for light-duty vehicles through Part 218. This low-emission vehicle (LEV) regulations provide flexibility to auto manufacturers by allowing them to certify their vehicle models to one of several different emissions standards. These consist of several different tiers of increasingly stringent LEV emission standards to which a manufacturer may certify a vehicle, including LEV, ultra-low emission vehicle (ULEV), super-ultra-low-emission vehicle (SULEV), and ZEV. The different standards are intended to provide flexibility to manufacturers in meeting program requirements. However, manufacturers must demonstrate that the overall fleet for each model year meets the specified non-methane organic gas standard for that year. These requirements are progressively more stringent with each model year.

A 2016 update to Part 218 incorporated California’s latest LEV standards (LEV III) and ZEV standards into New York’s program. These LEV III amendments took effect for 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles. The ZEV revisions apply to 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

The EPA is proposing to approve New York’s certification that the State has satisfied the requirements for clean fuels for fleets under the CAA for the 2008 8-hour

Ozone NAAQS. New York's program demonstrates that any new light- or heavy-duty vehicle purchased today are certified to current standards, including California's LEV III standards, thus is deemed to comply with the Clean Fuel Fleets standards as Ultra Low-Emission Vehicles.

IV. EPA's Proposed Action

In this rule, EPA is proposing to approve the SIP revision submitted by the State of New York on January 29, 2021, for purposes of meeting the requirement for RACT for the 2008 8-hour Ozone NAAQS in New York's portion of the NYMA for the Serious classification. The EPA is also proposing to approve that same submittal for meeting New York's RACT requirements for the 2015 8-hour Ozone NAAQS in the NYMA and for meeting the State's requirements for statewide RACT for the 2015 8-hour Ozone NAAQS within the OTR. The EPA is also proposing to approve portions of a comprehensive SIP revision submitted by the State of New York on November 29, 2021, certifying that the State has satisfied the requirements for an ozone nonattainment new source review program, certifying that the State has satisfied the requirements for a nonattainment emission inventory, and certifying that the State has satisfied the requirements for clean fuels for fleets. EPA is also proposing to approve New York's reasonable further progress plans and MVEB for both the Moderate and Serious classifications of the 2008 Ozone NAAQS in the NYMA.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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.

In addition, this proposed rulemaking action, pertaining to New York's submissions, is not approved to apply on any Indian reservation land or in any other area where the 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The NYSDEC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Incorporation by Reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and Recordkeeping Requirements, Volatile Organic Compounds.

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

Lisa Garcia,
Regional Administrator,
Region 2.

[FR Doc. 2023-18283 Filed: 8/24/2023 8:45 am; Publication Date: 8/25/2023]