



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2025-0040; FRL-12733-01-R2]

### **Approval and Promulgation of State Implementation Plans; New York; Emission Statement Certification of the 2008 and 2015 Ozone National Ambient Air Quality Standards**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the comprehensive State Implementation Plan (SIP) revisions submitted by New York that certify that the State has satisfied the requirements for an emission statement program for both the Serious and Moderate classifications of the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS), respectively. These actions are being taken in accordance with the requirements of the Clean Air Act (CAA or Act).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2025-0040 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formerly referred to as 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>. 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 CUI 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 CUI or multimedia submissions, and general guidance on making effective comments, please visit

*<https://www.epa.gov/dockets/commenting-epa-dockets>*.

**FOR FURTHER INFORMATION CONTACT:** Fausto Taveras, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007-1866, telephone number: (212) 637-3378, email address: [taveras.fausto@epa.gov](mailto:taveras.fausto@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

- I. What did New York submit?
- II. Background
  - A. Ozone Designations and Relevant SIP Submissions
  - B. Statutory and Regulatory Requirements for Emission Statements
- III. Summary and Evaluation of New York’s Emission Statement Certifications
- IV. The EPA’s Proposed Action
- V. Statutory and Executive Order Reviews

**I. What did New York submit?**

On January 29, 2021, New York submitted a SIP revision for purposes of addressing ozone elements for the 2008 and 2015 ozone 8-hour NAAQS for the New York 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). Within this comprehensive SIP, the State included its certification that it has satisfied the

requirements of an emission statement program for the 2015 ozone Moderate classification, pursuant to CAA section 182(a)(3)(B) and 182(b), for the NYMA nonattainment area.

In addition, New York also submitted a comprehensive SIP revision on November 29, 2021. Within that submittal, New York included its certification that the State has satisfied the requirements of an emission statement program for the 2008 ozone Serious classification, pursuant to CAA section 182(a)(3)(B) and 182(c), for the NYMA nonattainment area. The EPA addressed the remaining ozone elements, outlined in New York’s comprehensive January 29, 2021, and November 29, 2021, SIP revisions, in a separate rulemaking. 88 FR 77208 (November 9, 2023). Table 1 presents the Ozone SIP elements addressed in New York’s comprehensive January 29, 2021, and November 29, 2021, SIP submissions along with the respective ozone NAAQS classification and nonattainment areas.

**Table 1–SIP Elements Addressed in New York’s Comprehensive SIP Revision Submitted on January 29, 2021, and November 29, 2021**

<b>Ozone NAAQS and Classification</b>	<b>SIP Element</b>	<b>Nonattainment Areas</b>	<b>SIP Submission Date</b>
2008 Ozone NAAQS – Serious Classification	Certification of the State’s Emission Statement Program pursuant to CAA section 182(c)	New York’s portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT)	November 29, 2021
2015 Ozone NAAQS – Moderate Classification	Certification of the State’s Emission Statement Program pursuant to CAA section 182(a)(3)(B) and 182(b)	New York’s portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT)	January 29, 2021

## **II. Background**

### *A. Ozone Designations and Relevant SIP Submissions*

In 2008, the EPA revised the health-based NAAQS for ozone, setting it at 0.075 parts per million (ppm), or 75 parts per billion (ppb), averaged over an 8-hour time frame. 73 FR 16436 (March 27, 2008). The EPA determined that the revised 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors and individuals with a pre-existing respiratory disease like asthma. *Id.*

On May 21, 2012, the EPA published its final attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour ozone standard. 77 FR 30088. This action became effective on July 20, 2012. Within that action, the EPA designated two 8-hour ozone marginal nonattainment areas in New York State, which were 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.<sup>1</sup> 40 CFR 81.333. The Jamestown nonattainment area is composed of Chautauqua County. *Id.* On May 4, 2016, the EPA determined that Jamestown attained the 2008 ozone NAAQS by the July 20, 2015, attainment date and that the NYMA nonattainment area did not, therefore reclassifying the New York portion of the NYMA from a Marginal to a Moderate nonattainment area. 81 FR 26697. Following the NYMA's reclassification, the nonattainment area had an applicable attainment date of July 20, 2018. *Id.* Subsequently, the NYMA nonattainment area also failed to meet the Moderate July 20, 2018, attainment date. Therefore, on August 23, 2019, the EPA published a final rule that reclassified the New York portion of the NYMA, and other States' nonattainment areas, from Moderate to Serious for the 2008 ozone standard. 84

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<sup>1</sup> 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. 77 FR 30088 (May 21, 2012).

FR 44238. After the NYMA was reclassified to a Serious nonattainment area, on November 29, 2021, New York submitted a comprehensive SIP revision; this November 29, 2021 SIP revision included an attainment demonstration and emission statement certification and other required SIP elements relating to the 2008 8-hour ozone standard for the Serious classification.<sup>2</sup> The EPA published a final rule that reclassified the New York portion of the NYMA, along with other States' nonattainment areas, from Serious to Severe because the NYMA nonattainment area also failed to meet the Serious area attainment date of July 20, 2021. 87 FR 60926 (October 7, 2022). This reclassification to Severe resulted in a revised attainment date for the New York portion of the NYMA of July 20, 2027.*Id.* A SIP submittal to address the requirements associated with the Severe classification was due on May 7, 2024. *Id.*

Regarding the 2015 ozone NAAQS, on June 4, 2018, the 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 the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. Since the NYMA was reclassified to a Moderate nonattainment area, New York, on January 29, 2021, submitted a comprehensive SIP revision, including a Reasonably Available Control Technology (RACT) and emission statement certification, relating to the 2015 8-hour ozone standard for the Moderate

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<sup>2</sup> On November 9, 2023, the EPA approved portions of a comprehensive SIP revision submitted by New York on November 29, 2021, which included: (1) The reasonable further progress plan and transportation conformity budgets for the 2008 8-hour ozone Serious classification of the NYMA; (2) an ozone nonattainment new source review (NNSR) program which applies state-wide for emissions of NO<sub>x</sub> and VOC from stationary sources; (3) a nonattainment emission inventory; and (4) clean fuels for fleets. *See* 88 FR 77208.

classification.<sup>3</sup> On July 25, 2024, the EPA granted a voluntary reclassification request under CAA section 181(b)(3) for the NY-NJ-CT nonattainment area for the 2015 ozone NAAQS, which reclassified the area from Moderate to Serious. 89 FR 60314. SIP submissions that address the requirements associated with the Serious classification are due on January 1, 2026. 90 FR 5651.

Additionally, on December 6, 2018, the EPA published a final rule outlining requirements for States to follow for implementing their 2015 ozone NAAQS (2015 Ozone Implementation Rule). 83 FR 62998. The December 6, 2018, rule provides that air agencies must either submit the emission statement regulation required by CAA section 182(a)(2)(B) or provide a written statement to the EPA as a SIP revision for approval certifying a previously approved regulation. *Id.*

#### *B. Statutory and Regulatory Requirements for Emission Statements*

The air quality planning and SIP requirements for ozone nonattainment and transport areas are established in subparts 1 and 2 of part D of title I of the Act, as amended in 1990. The EPA published a “General Preamble” and “Appendices to the General Preamble,” which describe how the EPA intends to review SIPs submitted under title I of the Act. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The EPA has also issued a draft guidance document, entitled “Guidance on the Implementation of an Emission Statement Program” (Emission Statement Guidance), dated July 1992, which describes the minimum requirements for approvable emission statement programs.<sup>4</sup>

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<sup>3</sup> On November 9, 2023, the EPA approved portions of a comprehensive SIP revision submitted by New York on January 29, 2021, which included: (1) RACT certification for the 2008 8-hour Ozone NAAQS in the New York portion of the NY-NJ-CT nonattainment area for the Serious classification; (2) RACT certification for the 2015 8-hour Ozone NAAQS in the New York portion of the NY-NJ-CT nonattainment area for the Moderate classification; and (3) RACT certification for the 2015 8-hour Ozone NAAQS throughout the entire State of New York to address RACT commitments as part of the Ozone Transport Region. 88 FR 77208.

<sup>4</sup> EPA, Guidance on the Implementation of an Emission Statement Program, available at <https://www.epa.gov/air-emissions-inventories/guidance-implementation-emission-statement-program> (URL dated March 25th, 2025).

Section 182(a)(3)(B)(i) of the Act requires that States, which contain all or part of any non-attainment area, submit SIP revisions to the EPA by November 15, 1992. The provision further requires that owners/operators of stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) provide the State with a statement, at least annually, of the source's actual emissions of VOC and NO<sub>x</sub>. Sources were to submit their first emission statements to their respective States by November 15, 1993. Pursuant to the Emission Statement Guidance, if the source emits either VOC or NO<sub>x</sub> at or above levels for which the State Emission Statement rule requires reporting, then the source should include the other pollutant (*i.e.*, VOC or NO<sub>x</sub>) in the same facility's emission statement, even if the source emits the other pollutant below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows States to waive, with the EPA's approval, the requirement for an emission statement for classes or categories of sources located in nonattainment areas, which emit less than 25 tons per year (tpy) of the actual plantwide VOC or NO<sub>x</sub>. The section 182(a)(3)(B)(ii) waiver includes the following conditions: (1) the class or category of sources are included in the base year and periodic inventories, and (2) emissions are calculated using emission factors established by the EPA, such as those found in EPA publication AP-42 or other methods acceptable to the EPA.<sup>5</sup>

The required Emission Statement Program defines how air agencies obtain emissions data directly from certain facilities and then report this data, along with other information, to the EPA as part of the SIP emission inventories required under CAA sections 182(a)(1) and 182(a)(3)(A). The Emission Statement Program is generally referred to as an emissions statement regulation as it outlines how certain facilities must report emissions and facility activity data to an air agency (typically a state agency).

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<sup>5</sup> EPA, AP-42 Compilation of Air Pollutant Emissions Factors from Stationary Sources, available at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources> (URL dated March 27th, 2025).

Reports submitted to air agencies must be accompanied by “a certification that the information contained” in the report is “accurate to the best knowledge” of the facility.<sup>6</sup> To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data elements required by the EPA (see 40 CFR 51.1115 and 40 CFR 51.1315).

### **III. Summary and Evaluation of New York’s Emission Statement Certifications**

As discussed in section I., New York’s January 29, 2021, and November 29, 2021, comprehensive SIP submissions included emission statement certifications for the Moderate and Serious classifications of the New York portion of the NYMA for the 2015 and 2008 Ozone NAAQS, respectively.

In New York's January 2021 SIP submittal, the State certified that its state-wide federally approved regulation at title 6 of the New York Code of Rules and Regulation (NYCRR) subpart 202-2, “Emission Statements,” satisfies the federal requirement for an emission statement program for the 2015 70 ppb 8-hour ozone NAAQS (6 NYCRR subpart 202-2). The EPA most recently approved New York’s state-wide certification on May 13, 2020, for satisfying the requirement of an emission statement program for the 2008 8-hour ozone NAAQS for the Moderate classification. 85 FR 28490.

The EPA stated in the 2015 ozone implementation rule that if an area has a previously approved emission statement rule enforced for (1) the 2008 ozone NAAQS; (2) the 1997 ozone NAAQS; or (3) the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2015 ozone NAAQS, then such a rule should be sufficient for the purposes of the emissions statement requirement for the 2015 ozone NAAQS.<sup>83</sup> FR 62998 (December 06, 2018).

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<sup>6</sup> U.S. EPA 1992 Guidance of the Implementation of an Emission Statement Program, Research Triangle Park, NC. Appendix B-2.

Under 6 NYCRR subpart 202-2, “Emission Statements,” owners or operators of a major facility within the State, including stationary sources of VOCs or NO<sub>x</sub> that emit 25 tpy or greater, must submit annual emission statements to the New York Department of Environmental Conservation (NYSDEC).<sup>7</sup> The emission statements submitted to the NYSDEC are required to include actual annual emissions of VOC and NO<sub>x</sub> in units of pounds per year. Consistent with 40 CFR 51.1115(d) and 40 CFR 51.1315(d), the NYSDEC develops and submits reports of emissions from point sources to the EPA pursuant to the Federal Air Emission Reporting Requirements (AERR) Rule for uploading to the EPA’s National Emission Inventory (NEI).

New York certifies that the emission statement requirement of CAA section 182(a)(3)(B) is fully addressed through 6 NYCRR subpart 202-2, which is applicable state-wide.<sup>8</sup> Therefore, the EPA is proposing to approve New York’s emission statement certification that the previously approved SIP element fully meets the requirements of the CAA for the Moderate classification of the 2015 8-hour ozone NAAQS for the New York portion of the NYMA nonattainment area. The EPA determines that the State’s previously approved emission statement program is certified to meet the requirements for the Moderate classification of the 2015 Ozone NAAQS, since the program collects data on actual VOC and NO<sub>x</sub> emissions in pounds per year from major sources that emit or have the potential to emit 25 tpy or greater of VOC or NO<sub>x</sub>. Appendix A to subpart A of part 51, title 40. The EPA approved a revision to 6 NYCRR subpart 202-2 into New York’s SIP on December 28, 2023. 88 FR 89593.

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<sup>7</sup> Pursuant to CAA section 182(a)(3)(B)(ii), facilities that are not included in New York’s Emission Statement Program are still included in the State’s subsequent periodic emission inventories. 6 NYCRR subpart 202-2.2(b)(3) provides, that “every three annual reportable emissions shall include the actual annual emissions of exempt emission sources,” while 6 NYCRR subpart 202-2.3(e) requires facilities to report estimates of VOC, NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>2.5</sub>, PM<sub>10</sub>, and CO emissions from exempt activities every three years as part of the periodic emission inventory.

<sup>8</sup> The EPA approved this state-wide certification on May 13, 2020, for the 2008 75ppb 8-hour ozone NAAQS Moderate classification (85 FR 28490).

In the November 29, 2021, SIP submittal, New York also certifies that the same state-wide federally approved regulation at 6 NYCRR subpart 202-2, “Emission Statements,” continues to satisfy the CAA section 182(a)(3)(B) and section 182(c) requirements for an emission statement program for the Serious classification of the 2008 75 ppb 8-hour ozone NAAQS. Similarly, the EPA stated in the 2008 ozone implementation rule that if an area has a previously approved emission statement rule enforced for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. 80 FR 12264 (March 6, 2015). As described earlier in this section, on May 13, 2020, the EPA approved New York’s state-wide certifications, for addressing the emission statement requirement as it relates to the NYMA’s 2008 75ppb 8-hour ozone NAAQS Moderate classification. 85 FR 28490. Therefore, the EPA is also proposing to approve New York’s emission statement certification that the previously approved SIP element fully meets the CAA requirements for the Serious classification of the 2008 8-hour ozone NAAQS for the New York portion of the NYMA nonattainment area.

#### **IV. The EPA’s Proposed Action**

In this rule, the EPA is proposing to approve the certifications included in New York State’s January 29, 2021, and November 29, 2021, comprehensive SIP revisions. Within the January 29, 2021, comprehensive SIP revision, New York certified that the State has satisfied the requirements of an emission statement program for the 2015 ozone Moderate classification, pursuant to CAA sections 182(a)(3)(B) and 182(b), for the NYMA nonattainment area. Additionally, New York’s November 29, 2021, comprehensive SIP revision provided certification that the State’s existing emission statement regulation addresses the requirements of an emission statement program for the 2008 ozone Serious classification, pursuant to CAA sections 182(a)(3)(B) and 182(c), for

the NYMA nonattainment area. The EPA has determined that New York's federally approved emission statement regulation, 6 NYCRR subpart 202-2, "Emission Statements," continues to properly implement the emissions statement requirements of CAA sections 182(a)(3)(B) and 182(c) consistent with 40 CFR 51.1115 and 40 CFR 51.1315.

The EPA is soliciting public comments on the issues discussed in this document. 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* document.

## **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 Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k)(3); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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); and
- 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.

In addition, the SIP is not proposing 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 it 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).

#### **List of Subjects in 40 CFR Part 52**

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

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

**Michael Martucci,**  
*Regional Administrator,*  
*Region 2.*

[FR Doc. 2025-08077 Filed: 5/7/2025 8:45 am; Publication Date: 5/8/2025]