

Neither the AEA or the FOIA, which applies to records which an agency has, in fact, obtained, and not to records which merely could have been obtained, provide the NRC with the authority to require licensees to supply such documents to the public.

2. OCRE has not made a showing that supplementing the safety information which underlies and supports Commission action and is available to the public, would result in enhanced safety. In fact, granting the petition may have an adverse impact on safety. Resources that licensees would use to defend and explain matters would not be available to address substantive safety issues. Granting the petition may also have a chilling effect and discourage employees of licensees from documenting information that may be perceived as adverse to their employers resulting in less candid and frank self-assessments and "lessons learned" analysis. The access required by the petition could discourage licensee self-assessments and self-identification of the need for corrective action.

3. Without a corresponding enhancement of safety, the petition would create a significant but unnecessary administrative and economic burden on licensees without justification. Because the records which could be requested are "any record," such requests could significantly impact licensees which would be required to bear the cost of creating a system to assemble these documents as well as dedicating the administrative personnel necessary to locate and compile the requested information for reproduction. Unlike FOIA, which allows for the recovery of the costs associated with searching and reviewing documents, the only cost which the petition allows is the cost of document production.

4. The petition is contrary to efficient regulatory oversight of NRC facilities, as well as the legislative move to reduce unnecessary recordkeeping and reporting requirements. NRC has been engaged in activities to eliminate unnecessary requirements and to move toward risk-informed requirements which focus on safety matters. These internal agency initiatives have gone hand-in-hand with the objectives and requirements of the PRA. The documents which are the subject of the petition for rulemaking include documents that NRC has determined are unnecessary for NRC to fulfill its mission regarding the protection of the public health and safety and the common defense and security.

5. Granting the petition would adversely impact the effectiveness of the NRC by increasing the burden on the

Commission's adjudicatory activities without a corresponding enhancement of safety. The appeal process provided by this petition would require AJs to be called upon to determine whether a record can be the subject of a request; whether reproduction fees are reasonable; and, whether a licensee's response is timely. This would increase the work load of NRC AJs which would affect the amount of time available for other cases. The petition does not provide for the Commission to review the decisions of its subordinate judges which undermines the Commission's ability to effectively monitor and administer its adjudicatory processes.

6. OCRE has not made a showing that without this amendment to 10 CFR part 9 the public will not be able to fully participate in the NRC hearing process provided for under the AEA. The AEA, as implemented by the Commission's regulations, provides the opportunity for a hearing to any person whose interests may be affected by the granting, suspending, revoking or amending of an NRC license or application to transfer control. The documents which provide the basis for an application to grant, renew, or amend, a license, are available in electronic form for viewing or downloading at the NRC's Public Electronic Reading Room, <http://www.nrc.gov/reading-rm.html>, or at the NRC's PDR for public inspection and copying. These documents are sufficient for a member of the public to make an informed decision as to whether the person desires to participate in the hearing process and to formulate appropriate contentions. The Commission is satisfied that, given the information that the NRC ensures is available to the public, the access to licensee-held documents that the petition requests is not necessary for meaningful participation in the hearing process.

#### V. Conclusion

In sum, granting the petition could create a significant administrative and economic burden on licensees and increased administrative burden on the NRC without a corresponding enhancement of safety. The potential but speculative benefits that might occur from public access to licensee-held documents are outweighed by the burden granting the petition would impose. Moreover, the Commission does not have the authority to require a licensee to provide documents to members of the public that NRC has determined are not necessary to be kept as agency records to provide the basis for NRC's regulatory and licensing

actions. The petition for rulemaking filed by OCRE, PRM-9-2, is denied.

Dated at Rockville, Maryland, this 22nd of October, 2003.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. NY63-263, FRL-7579-5]

#### Approval and Promulgation of Implementation Plans; New York; Revised Motor Vehicle Emissions Budgets for 1990 and 2007 Using MOBILE6

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is proposing approval of New York's revised 1990 and 2007 motor vehicle emission budgets recalculated using MOBILE6; and modified date for submittal of the State's mid-course review. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in its portion of the New York-Northern New Jersey-Long Island nonattainment area (NAA). **DATES:** Comments must be received on or before November 28, 2003. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866. Electronic comments could be sent either to [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-

line instructions for submitting comments.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866, and New York State Department of Environmental Conservation, Office of Air and Waste Management, 14th Floor, 625 Broadway, Albany, New York 12233-1010.

**FOR FURTHER INFORMATION CONTACT:**

Andrew A. Bascue, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249 or [bascue.andrew@epa.gov](mailto:bascue.andrew@epa.gov).

**SUPPLEMENTARY INFORMATION:** This revision is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally adopted and submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

New York held a public hearing on its proposed SIP revision on June 24, 2003. If New York's proposed SIP revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will take final action on the State's plan consistent with this proposal and any submitted comments. Before EPA can approve this SIP revision, New York must adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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**1. Background**

In November of 1999, EPA issued two memoranda<sup>1</sup> to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard<sup>2</sup> benefits into their SIPs and motor vehicle emissions budgets ("budgets"). Although these memoranda primarily targeted certain serious and severe ozone NAAs, EPA has implemented this policy in all other areas that have made use of Federal Tier 2 benefits in air quality plans from EPA's April 2000 MOBILE5 guidance, "MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5." All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to make a commitment to revise and resubmit their budgets within either 1 or 2 years of the final release of MOBILE6 in order to gain SIP approval.

On April 18, 2000, New York submitted a revision to the 1-hr Ozone Attainment Demonstration SIP for the New York portion of the New York-Northern New Jersey-Long Island severe ozone Nonattainment Area, which for purposes of this action will be referred to as the New York Metropolitan NAA. The New York Metropolitan NAA is comprised of the New York Counties of Bronx, Kings, Nassau, New York, Putnam, Queens, Richmond, Rockland and Westchester and the lower Orange County towns of Chester, Minisink, Monroe, Tuxedo, Warwick and Woodbury. The April 18, 2000 SIP revision included, among other things, revised budgets using interim MOBILE5-based estimates of the Tier 2 standards and an enforceable commitment to revise these budgets as well as the attainment demonstration using the MOBILE6 model within one year of the release of the model. Additional information on EPA's final approval of New York's April 18, 2000 submittal can be found in the February 4, 2002 **Federal Register** (67 FR 5170).

EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Thus, the effective date of that **Federal Register** notice constituted the start of the 1 year

<sup>1</sup> Memoranda, "Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations," issued November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking," issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

<sup>2</sup> The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

time period within which New York was required to revise its 1-Hour Ozone Attainment Demonstration SIP using the MOBILE6 model. On January 29, 2003, New York submitted to EPA a proposed revision for its SIP to meet this requirement. This proposed revision and the MOBILE6 modeling methodology used were refined and supplemented subsequent to discussion between New York and EPA. On June 24, 2003, New York held a public hearing on the revised motor vehicle emission budgets using MOBILE6 and EPA is proposing, herein, to approve those budgets.

**2. What Is MOBILE6?**

MOBILE6 is the most current version of a long line of MOBILE emissions factor models developed by EPA for estimating pollution from on-road motor vehicles in states outside of California. The model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variations in local conditions such as temperature, humidity, fuel quality, and inspection and maintenance programs. The model is used to calculate current and future inventories of motor vehicle emissions at the local, state and national level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on the model are also used to meet the Federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major update of the MOBILE model since 1993.

**3. What Is the Purpose and Content of New York's Submittal?**

The State submitted this proposed SIP revision to address an enforceable commitment made in the April 18, 2000 Attainment Demonstration SIP revision, approved by EPA on February 2, 2002 (67 FR 5170). The enforceable commitment obligated the State to update its 2007, attainment year, motor

vehicle emissions budgets using the MOBILE6 model and to reevaluate the attainment demonstration based on the updated budgets. The proposed revision demonstrated that the updated motor vehicle emissions budgets calculated using MOBILE6 continued to support the projected attainment of the 1-hour ozone NAAQS for the New York Metropolitan NAA by the attainment date of 2007. Also included as part of the proposed SIP revision, New York proposed to modify the planned date for submitting its mid-course review to December 31, 2004.

#### 4. What Are the Revised MOBILE6 Budgets?

Table 1 below summarizes the revised motor vehicle emissions budgets for the New York Metropolitan NAA in tons per summer day (tpd). These revised budgets were developed using the latest planning assumptions, including the most recently available vehicle registration data, vehicle miles traveled (VMT) estimates, vehicle speeds, fleet mix, and SIP control measures. For additional details the reader is referred to the Technical Support Document (TSD) for this proposed action. EPA is proposing to approve these revised 1990 and 2007 motor vehicle emissions budgets. The 2007 motor vehicle emissions budgets will serve as the transportation conformity budgets for the New York Metropolitan NAA.

TABLE 1.—NEW YORK METROPOLITAN NAA MOTOR VEHICLE EMISSIONS BUDGETS, REVISED WITH MOBILE6

1990		2007	
VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)
596	512	182	230

#### 5. Are the Revised MOBILE6 Budgets Consistent With New York's 1-Hour Attainment Demonstration?

EPA has found that New York's revised MOBILE6 budgets are consistent with its 1-hour ozone Attainment Demonstration. EPA has articulated its policy regarding the use of MOBILE6 for SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity"<sup>3</sup> and "Clarification of Policy Guidance for MOBILE6 in Mid-

<sup>3</sup>Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

course Review Areas."<sup>4</sup> New York included in the January 29, 2003 submittal a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration SIP continues to demonstrate attainment using revised MOBILE6 budgets for the New York Metropolitan NAA, see Table 2. New York's attainment demonstration used photochemical grid modeling supplemented with a weight of evidence analysis. Consistent with EPA policy, as detailed in the aforementioned guidance documents, the State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 budgets with the previously approved (67 FR 5170) MOBILE5 budgets for the New York Metropolitan NAA to determine if attainment will still be predicted by the 2007 attainment year. Specifically, the State calculated the percent reduction from the 1990 base year to the 2007 attainment year for NO<sub>x</sub> and VOC MOBILE5-based budgets. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and 2007 attainment year budgets.

TABLE 2.—RELATIVE REDUCTION COMPARISON BETWEEN MOBILE5-BASED BUDGETS AND MOBILE6-BASED BUDGETS FROM BASE YEAR TO ATTAINMENT YEAR

	NO <sub>x</sub> (percent)	VOC (percent)
MOBILE5 .....	44.8	66.7
MOBILE6 .....	55.1	69.3

As shown in Table 2, New York's relative reduction comparison shows that for the New York Metropolitan NAA the percent reductions in VOC and NO<sub>x</sub> budgets obtained through the use of MOBILE6 are greater than the percent reductions calculated with MOBILE5-based budgets. As such, New York's January 29, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2007 for the New York Metropolitan NAA, *i.e.* the SIP continues to demonstrate its purpose.

<sup>4</sup>Memorandum, "Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas," issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

#### 6. Are New York's Motor Vehicle Emissions Budgets Approvable?

Table 1 summarizes New York's revised budgets contained in the January 29, 2003 submittal. These budgets were developed using the most recent planning assumptions, including the most recently available vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. The updated budgets for 2007 were developed for the New York Metropolitan Transportation Council (NYMTC) to use for purposes of transportation conformity, which it is required to meet by October 2005. The budgets were developed using appropriate methodology and support the SIP in demonstrating its purpose, therefore the budgets are approvable. Additional detail regarding the methodology and inputs used by the State can be found in the TSD for this proposed action.

Concurrent with this notice of proposed rulemaking, EPA is completing the adequacy review process on the revised 2007 attainment budgets for NYMTC. EPA held the 30-day comment period for the budgets between July 1, 2003 and July 31, 2003 by posting a notice on EPA's conformity website: <http://www.epa.gov/otaq/transp/conform/adequacy.htm>. In accordance with the "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,"<sup>5</sup> EPA will issue its adequacy determination, including a response to comments, by posting it on the conformity Web site, and will also subsequently announce the determination in the **Federal Register**. The revised 2007 attainment budget will apply for conformity purposes once EPA issues its adequacy determination.

#### 7. When Will New York Submit Its Mid-Course Review?

On April 18, 2000, New York submitted a mid-course review analysis which showed a continued downward trend in both the number of violations of the 1-hour ozone standard and the measured ozone concentrations. EPA found, however, that several more years of monitored data and implementation of the Regional NO<sub>x</sub> Program were needed before a true mid-course review of the attainment demonstration could be made. Therefore, on February 4, 2002 (67 FR 5170), EPA approved New York's further commitment to perform a mid-

<sup>5</sup>Memorandum, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," issued May 14, 1999. A copy of this memorandum can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

course review and submit the results to EPA by December 31, 2003.

Due to challenges by upwind states of EPA's Regional NO<sub>x</sub> Program, the benefit of these upwind NO<sub>x</sub> reductions will not be fully realized until late 2003. Therefore, EPA has allowed states to revise their mid-course commitments to provide for the review no later than December 31, 2004. In order to be consistent with surrounding states and to include the benefit of the Regional NO<sub>x</sub> Program in its mid-course review, New York revised its commitment to perform a mid-course review to December 31, 2004. EPA proposes to approve this revised commitment.

### 8. Summary of Conclusions and Proposed Action

This action is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New York and submitted formally to EPA for incorporation into the SIP.

EPA is proposing to approve New York's proposed SIP revision submitted on January 29, 2003. This submittal revises New Jersey's 1990 and 2007 motor vehicle emission budgets using MOBILE6 and modifies the planned date to complete the State's mid-course review to December 31, 2004. New York has demonstrated that its 1-Hour Attainment Demonstration SIP for the New York Metropolitan NAA continues to demonstrate attainment with the revised MOBILE6 budgets.

### 9. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 15, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[FRL-7579-7]

### Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2004

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to allocate essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2004. Essential use allowances enable a person to obtain controlled class I ODSs as an exemption to the regulatory ban of production and import of these chemicals, which became effective on January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The proposed allocations total 2077.91 metric tons of chlorofluorocarbons for use in metered dose inhalers. EPA is also proposing to allocate the remaining allowances for methyl chloroform (141.877 metric tons) to the U.S. Space Shuttle Program.

**DATES:** Written comments on this proposed rule must be received by the EPA Docket on or before November 28, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on November 7, 2003. If a hearing is held, EPA will publish a document in the Federal Register announcing the hearing information.

**ADDRESSES:** Comments on this proposed rulemaking should be submitted to Air and Radiation Docket, Environmental