

comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 95, any comments received, the related temporary rule (T.D. TTB-78), and a correction to the temporary rule (T.D. TTB-80) at <http://www.regulations.gov>. A direct link to the related Regulations.gov docket also is available under Notice No. 95 on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml. You also may view copies of these documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-453-2270 (new phone number).

FOR FURTHER INFORMATION CONTACT: For questions concerning processed tobacco permit and authorization procedures, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau at 1-877-882-3277; for other questions concerning this document, Notice No. 95, or the related temporary rule, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau at 202-453-2099 (new phone number).

SUPPLEMENTARY INFORMATION: In the *Federal Register* issue of June 22, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule (T.D. TTB-78; 74 FR 29401) setting forth regulatory amendments to 27 CFR parts 40, 41, 44, and 45 to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111-3, 123 Stat. 8). The principal changes made by CHIPRA involve permit and related requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco.

In the same issue of the *Federal Register*, we concurrently published a notice of proposed rulemaking, Notice No. 95 (74 FR 29433), to request comments on the regulatory amendments contained in the temporary rule. The preamble to the temporary regulations explained the proposed regulations. As originally published, comments on Notice No. 95 were due on August 21, 2009. (On July 29, 2009, we published corrections to the temporary rule in T.D. TTB-80 at 74 FR 37551.)

On August 19, 2009, TTB received a letter from a law firm representing the John Middleton Co., Philip Morris USA Inc., and U.S. Smokeless Tobacco Manufacturing Co. LLC, requesting an extension of the comment period for Notice No. 95. In the letter, the requester

noted the temporary rule's immediate effective date and the fact that TTB issued the temporary rule and the related notice of proposed rulemaking just before the annual TTB Expo, which was attended by many company officials. The letter stated these events gave the companies "little time to digest the implications of the temporary rule prior to the Expo * * *." Since returning from the Expo, the companies have found "the process of identifying all activity within the factories that might have implications for processed tobacco" to be "extensive and time consuming."

The letter also noted that the TTB temporary rule was issued on the same day as the enactment of the Family Smoking Prevention and Tobacco Control Act, which provides for regulation of tobacco products by the Food and Drug Administration. "Thus," the letter states, "key personnel within the Companies and other industry entities were involved in evaluation of this legislation and identification of its implications for their operations." The letter additionally noted that the comment period on the proposed rule coincided with the summer vacation season when company officials are most likely to be away from their offices.

Given the factors cited above, TTB agrees that the comment period for Notice No. 95 should be extended by an additional 60 days. Therefore, comments on Notice No. 95 are now due on October 20, 2009.

Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

Signed: August 20, 2009.

Cheri D. Mitchell,

Acting Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2009-0462, FRL-8949-1]

Approval and Promulgation of Implementation Plans; New York Reasonably Available Control Technology and Reasonably Available Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on portions of a State Implementation Plan revision submitted by New York State that are intended to meet some Clean Air Act requirements for attaining the 0.08 parts per million 8-hour ozone national ambient air quality standards. EPA is proposing to disapprove the reasonably available control technology requirement as it relates to the entire State of New York, including the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

In addition, EPA is proposing to disapprove the reasonably available control measure analysis as it relates to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area.

DATES: Comments must be received on or before September 24, 2009.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2009-0462, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* Werner.Raymond@epa.gov.

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA-R02-OAR-2009-0462. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber (wieber.kirk@epa.gov), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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I. What Action Is EPA Proposing?

The Environmental Protection Agency (EPA) has reviewed elements of New York's comprehensive State Implementation Plan (SIP) revisions for the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard)¹ along with other related Clean Air Act (Act) requirements necessary to ensure attainment of the standard. The EPA is proposing to disapprove the reasonably available control measure (RACM) analysis and New York's efforts to meet the reasonably available control technology (RACT) requirement.

New York provided additional information on July 31, 2009, which supplements the state-wide 2002 base year emissions inventory, the ozone projection emission inventory, the conformity budgets, the reasonable further progress (RFP) plan, and the contingency measures. EPA is reviewing this information and will make a decision in the near future as to whether New York has satisfied the requirements of the Act. EPA is also continuing to review the attainment demonstration, the new source review provisions and New York's request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area

¹Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

from "moderate" to "serious" and plans to address the other components of the SIP submittals in one or more separate proposals in the near future.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal, which is available online at <http://www.regulations.gov>, Docket number EPA-R02-OAR-2009-0462.

II. Background Information

A. What Are the Act Requirements for a Moderate 8-hr Ozone Nonattainment Area?

1. History and Time Frame for the State's Attainment Demonstration SIP

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are, the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist states in meeting the Act's requirements

for ozone, EPA released an 8-hour ozone implementation rule in two Phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that states must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.

2. Moderate Area Requirements

On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612) and referred to as the Phase 2 Rule, which addressed the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, RACT plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, RFP plans, RACM analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), and (c)).

III. What Was Included in New York's SIP Submittals?

After completing the appropriate public notice and comment procedures, New York made a series of submittals in order to address the Act's 8-hour ozone attainment requirements previously described in Section II.A.2. On September 1, 2006, New York submitted its state-wide 8-hour ozone RACT SIP, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard. On February 8, 2008, New York submitted two comprehensive 8-hour ozone SIPs—one for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" and one for the Poughkeepsie nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for Poughkeepsie, NY Area". The submittals included the 2002 base year emissions inventory, projection year emissions, attainment demonstrations, RFP plans, RACM analysis, RACT analysis, contingency measures, new source review and on-road motor vehicle emission budgets. These SIP revisions were subject to notice and

comment by the public and the State addressed the comments received on the proposed SIPs before adopting the plans and submitting them for EPA review and rulemaking action.

On July 31, 2009, New York provided supplemental information intended to clarify its February 8, 2008 ozone SIP submittals. EPA is reviewing this information and will make a decision in the near future as to whether New York has satisfied the requirements of the Act.

With respect to the Poughkeepsie area, EPA is in the process of evaluating its air quality monitoring data. It appears that the Poughkeepsie area may have attained the 8-hour ozone standard. If this turns out to be the case, consistent with 40 CFR 51.918, certain requirements of subpart 2 of part D of title I of the Act, namely reasonable further progress (including projection year inventories), attainment demonstration, RACM analysis and contingency measures, may no longer apply to the Poughkeepsie area. Therefore, EPA is not taking action at this time on these SIP elements for the Poughkeepsie area that are contained in the 8-hour ozone SIP that was submitted to EPA on February 8, 2008. However, EPA is taking action on the RACT SIP for the Poughkeepsie Area.

In addition to the previously mentioned 8-hour ozone SIP submittals, on April 4, 2008, New York submitted to EPA a request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area from "moderate" to "serious" pursuant to section 181(b)(3) of the Act. At this time, EPA is continuing to review New York's request for a voluntary reclassification of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area and plans to address New York's request in a separate proposed action in the near future.

IV. EPA's Review and Technical Information

A. Reasonably Available Control Technology (RACT) for Stationary Sources

1. What Are the Act Requirements?

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above for ozone to adopt RACT. Section 184(b)(1) of the Act requires that these RACT provisions apply to all areas (such as the entire State of New York) that are located in an Ozone Transport Region. In accordance with section 182(b), New York must, at a minimum,

adopt RACT level controls for sources covered by a Control Techniques Guidelines (CTG) document and for any non-CTG sources that are major according to the threshold for the area. 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.

In EPA's Phase 2 Rule to implement the 8-hour ozone standard, Section IV.G discusses the RACT requirements. It states, in part, where a RACT SIP is required, SIPs implementing the 8-hour standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or, where necessary, through a new RACT determination. The counties in the NYMA (and part of Orange County) were previously classified under the 1-hour ozone NAAQS as severe, requiring RACT, while the remaining counties in the State were subject to RACT as part of a moderate classification or as part of the Ozone Transport Region. In the NYMA and a portion of Orange County, the previous severe classification resulted in a requirement for major sources to be defined as those having emissions of 25 tons per year or more for either VOC or NOx.

In areas classified as moderate or areas located in the Ozone Transport Region (which includes all of New York State) under the 8-hour ozone standard, the definition for major sources in New York would have been 50 tons per year for VOC and 100 tons per year for NOx. New York chose to retain the 1-hour ozone plan emission threshold of 25 tons per year in the NYMA and a portion of Orange County for purposes of the RACT analysis which results in a more stringent evaluation of RACT. The rest of the State follows the moderate major source definition as previously mentioned.

2. How Did New York Perform Its RACT Analysis?

New York submitted a state-wide RACT assessment in a SIP revision dated September 1, 2006. In that submittal, New York evaluated its existing RACT regulations which were adopted to meet the 1-hour ozone standard, to ascertain whether the same regulations constitute RACT for the new 8-hour ozone NAAQS. New York's 8-hour ozone RACT SIP submittal is based on the determination that RACT has been met either through a certification that previously required RACT controls for the 1-hour ozone standard represent

RACT for 8-hour ozone implementation purposes or, where necessary, through a new RACT reevaluation for certain regulations or sources. In making its 8-hour ozone RACT determination, New York relied on EPA's RACT guidance ("Cost-Effective NO_x RACT" March 16, 1994), EPA's RACT Question and Answer document (May 18, 2006) and New York's Air Guide 20, "Economic and Technical Analysis for Reasonably Available Control Technology" (January 24, 1996). Accordingly, the basic framework for New York's RACT SIP determination is described below:

- Identify all source categories covered by Control Technique Guidelines (CTG) and Alternative Control Technique (ACT) documents.
- Identify applicable regulations that implement RACT.
- Certify that the existing level of controls for the 1-hour ozone standard equals RACT under the 8-hour ozone standard in certain cases.
- Declare that sources covered by a CTG and ACT do not exist within the

state and/or that RACT is not applicable in certain cases.

- Identify and evaluate applicability of RACT to individual sources not covered by state-wide regulation.
- Identify potential RACT revisions.

3. What Were the Results of New York's Analysis of RACT for Stationary Sources?

New York certified that all RACT regulations with effective dates from 1996 to the date when the RACT analysis was performed (2006) are RACT for the 8-hour ozone NAAQS because the associated economic feasibility calculations are consistent with the ten-year amortization period for control equipment in typical RACT analyses. Additionally, based on the review of current technologies,² New York found no data indicating that the existing levels of control for these source categories are no longer RACT. To determine RACT applicability for measures with an effective date prior to 1996, New York performed a re-evaluation by using EPA's guidance and

comparing control measures to those currently enacted by other 1-hour ozone nonattainment areas.³

a. CTGs and ACTs

New York reviewed its existing RACT regulations adopted under the 1-hour ozone standard to identify sources categories covered by EPA's CTG and ACT documents. New York's RACT SIP submittal lists the CTG and ACT documents and corresponding State RACT regulations that cover the CTG and ACT sources included in New York's emission inventory. For major non-CTG sources, the provisions in Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212 "General Process Emission Sources" regulate RACT compliance.

New York has implemented RACT controls state-wide for the 53 CTGs and ACTs that EPA has issued as of September 2006 to meet the requirements of the Act. Table 5 lists the RACT controls that have been promulgated in 6NYCRR and the corresponding EPA SIP approval dates.

TABLE 5—NEW YORK ADOPTED RACT REGULATIONS

NY regulation	Title	EPA approval date
Part 205	Architectural and Industrial Maintenance Coatings	12/13/04, 69 FR 72118.
Part 211	General Prohibitions	11/27/98, 63 FR 65559.
Part 212	General Process Emission Sources	9/25/01, 66 FR 48961.
Part 216	Iron and/or Steel Processes	7/20/06, 71 FR 41163.
Part 220	Portland Cement Plants	Submitted but not approved into the SIP.
Part 223	Petroleum Refineries	7/19/85, 50 FR 29382.
Part 224	Sulfuric and Nitric Acid Plants	7/19/85, 50 FR 29382.
Part 226	Solvent Metal Cleaning Processes	1/23/04, 69 FR 3240.
Part 227–2	Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO _x)	1/13/05, 70 FR 2358.
Part 228	Surface Coating Processes	1/23/04, 69 FR 3240.
Part 229	Petroleum and Volatile Organic Liquid Storage and Transfer	12/23/97, 62 FR 67006.
Part 230	Gasoline Dispensing Sites and Transport Vehicles	4/30/98, 63 FR 23668.
Part 232	Dry Cleaning	6/17/85, 50 FR 25079.
Part 233	Pharmaceutical and Cosmetic Processes	12/23/97, 62 FR 67006.
Part 234	Graphic Arts	12/23/97, 62 FR 67006.
Part 236	Synthetic Organic Chemical Manufacturing Facility Component Leaks	7/27/93, 58 FR 40059

The New York RACT SIP submittal contains a table (see Table 2—RACT Source Categories) listing all the CTG and ACT categories (53 categories in total) and the corresponding State regulations that address the requirements. EPA had previously approved and incorporated into the SIP all but Part 220 of the State regulations.

For many source categories, the existing New York rules go beyond the recommendations contained in the CTG/ACT documents in terms of more stringent emission limits and lower

thresholds of applicability. New York identified some categories where controls may be more stringent than the recommended levels contained in the CTG/ACT documents and these are identified in Section A.3.d below. Based on the September 1, 2006 RACT evaluation, New York states that the existing RACT rules for the remaining CTG and ACT categories met the RACT requirement for the 8-hour ozone NAAQS implementation purposes.

b. Source Categories not Applicable in New York State

New York previously certified to the satisfaction of EPA (40 CFR 52.1683) that no sources are located in the nonattainment area of the State that are covered by the following CTGs: (1) Natural Gas/Gasoline Processing Plants; (2) Air Oxidation Processes at Synthetic Organic Chemical Manufacturing Industries; and (3) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. New York has reviewed its emission inventory and

² Information available at EPA's technology transfer network: <http://cfpubl.epa.gov/rblclhtm/bl02.cfm>.

³ Serious and Severe Ozone Nonattainment areas: Information on emissions, control measures

adopted or planned and other available control measures. EPA, November 1999.

emission statements as required under 6 NYCRR 202–2, entitled, “Emission Statement” for stationary sources and reaffirmed that either there are no sources within New York State or that there are no sources within New York State that exceed the applicability thresholds for the above CTGs.

c. Source-Specific RACT Determinations

The 8-hour ozone RACT analyses must address source-specific RACT as it applies to a single regulated entity. The source-specific RACT determination applies to sources that have obtained facility-specific emission limit or an alternative emission limit, i.e., a variance. A case-by-case RACT analysis may also be required for sources that are not in an established source category covered by an existing state regulation or addressed by a CTG. New York’s “Guide for the Economic and Technical Analysis for Reasonably Available Control Technology” outlines the process and conditions for granting source-specific RACT variances. Under the Act, these individually source-specific RACT determinations need to be submitted by the State as a SIP revision and EPA must approve it. Therefore, New York included in Appendix D of its September 1, 2006 RACT SIP submittal a listing of VOC and NO_x source facilities that are subject to RACT source-specific SIP revision under the 1-hour ozone SIP and corresponding emission limits or regulations governing the variances. Consistent with the Act, on September 16, 2008, New York submitted to EPA a SIP revision that included most of the source-specific RACT revisions identified in Appendix D of the RACT SIP submittal. EPA is performing its technical review of that submittal and will take separate rulemaking actions in the near future for each of the source-specific determinations.

d. Additional Control Measures Needed for Attainment

In some instances, New York has adopted regulations with emission limits that are more stringent than those recommended by the CTGs and ACTs. For example, Part 205, “Architectural and Industrial Maintenance Coatings,” Part 226, “Solvent Metal Cleaning Operations,” Part 228, “Surface Coating Processes” have each been adopted by the State with more stringent limits or applicability than what was recommended by the corresponding CTGs.

In addition, included in New York’s February 8, 2008 8-hour Ozone SIP was a list of additional control measures that are currently under development by the

State (Section 9, “New Stationary Source Measures” of New York’s SIP). The State committed to adopt regulations applicable to the following source categories: Adhesives and Sealants, Consumer Products, Graphic Arts, Asphalt Formulation, Asphalt Paving Production, Portland Cement Plants, Glass Manufacturing, High Electric Demand Day, Distributed Generation, MACT and ICI Boilers RACT. In letters dated January 27, 2009 and June 23, 2009, New York revised its schedules and commitments to adopt the new or revised regulations relevant to most of these categories until later dates.

4. What Is EPA’s Evaluation?

New York submitted a state-wide RACT assessment on September 1, 2006 and supplemented the RACT assessment with additional information on September 16, 2008 and February 8, 2008 for the NYMA. Collectively, the RACT submission from New York consists of: (1) A certification that previously adopted RACT controls in New York’s SIP for various source categories that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour ozone implementation purposes; (2) a number of source specific RACT determinations; (3) a negative declaration that for certain CTGs and/or ACTs there are no sources within New York State or that there are no sources above the applicability thresholds; and (4) a commitment to adopt new or more stringent regulations that represent RACT control levels for specific source categories.

EPA has reviewed the State’s RACT analysis and has determined that the state-wide RACT analysis submitted on September 1, 2006 and supplemented on September 16, 2008 and February 8, 2008 for the NYMA, does not adequately address the RACT requirement consistent with sections 172(c)(1), 182(b)(2) and 182(f) of the Act, as interpreted in EPA’s regulations, guidance and policies. EPA’s determination is based on the fact that New York has:

- Not adopted all RACT measures identified by the State as part of New York’s RACT SIP submitted on September 1, 2006 and supplemented on September 16, 2008 and February 8, 2008;
- Missed commitments to adopt all RACT measures according to schedules contained in New York’s RACT SIP submitted on September 1, 2006 and supplemented on September 16, 2008

and February 8, 2008. The February 8, 2008 SIP submittal included a schedule that identified that all new or revised control measures would be adopted by December 2008. (In a letter dated June 23, 2009, New York has subsequently revised that schedule and committed to propose all of those measures by September 2009 and adopt them by March 2010);

- Not adopted the necessary control measures to expedite attainment of the 8-hour ozone standard consistent with EPA’s policy on for a voluntary reclassification request (see 70 FR 71631).

Therefore, EPA is proposing to disapprove New York’s state-wide RACT SIP, which includes the RACT assessment for the NYMA. EPA encourages New York to accelerate its rulemaking process and adopt control measures prior to the commitment date of March 2010 for the RACT measures that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable and provide for cleaner air for the public.

B. Reasonably Available Control Measures (RACM) Analysis

1. What Are the Act Requirements?

Pursuant to section 172(c)(1) of the Act, states are required to implement all Reasonably Available Control Measures (RACM) as expeditiously as practicable. Specifically, section 172(c)(1) states: “In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.”

Furthermore, in EPA’s Phase 2 Rule, EPA describes how states must include with their attainment demonstration a RACM analysis (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved “as expeditiously as practicable.”

RACM is defined by the EPA as any potential control measure for application to point, area, on-road and

non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible
- The control measure is economically feasible
- The control measure does not cause “substantial widespread and long-term adverse impacts”
- The control measure is not “absurd, unenforceable, or impracticable”
- The control measure can advance the attainment date by at least one year.

RACM differs from RACT in that RACM applies to all source categories and RACT applies to only stationary sources.

2. How Did New York Perform Its RACM Analysis?

The Ozone Transport Commission staff and member States, including New York, formed and participated in several workgroups to identify and evaluate candidate control measures that could be used to demonstrate attainment of the 8-hour ozone NAAQS. Initially, the workgroups compiled and reviewed a list of approximately 1,000 candidate control measures. These control measures were identified through published sources such as EPA’s CTGs, National Association of Clean Air Agencies (NACAA) “Menu of Options” documents, the AirControlNET database, emission control initiatives in member States as well as other States including California, state/regional consultations, and stakeholder input. The workgroups evaluated data regarding emissions benefits, cost-effectiveness (economic feasibility) and implementation issues (technological feasibility) to develop a preliminary list of 30 candidate control measures to be considered for more detailed analysis. These measures were selected to focus on the pollutants and source categories that are thought to be the most effective in reducing ozone levels in the Northeastern and Mid-Atlantic regions. The document “Identification and Evaluation of Candidate Control Measures—Final Technical Support Document,” dated February 28, 2007, is included in New York’s February 8, 2008 ozone SIP revisions as an Appendix as supporting documentation of the process and product of the workgroups.

Based on the analysis conducted by the workgroups, the Commissioners of the Ozone Transport Commission recommended that states consider reductions from the following source categories: Consumer Products, Portable Fuel Containers, Adhesives and Sealants Applications, Diesel Engine Chip Reflash, Cutback and Emulsified

Asphalt Paving, Asphalt Production Plants, Cement Kilns, Glass Furnaces, Industrial, Commercial and Institutional (ICI) Boilers, Regional Fuels.

3. What Were the Results of the RACM Analysis?

With the exception of Diesel Engine Chip Reflash and Regional Fuels, New York is developing new or revised regulations for all of the source categories recommended by the Commissioners of the Ozone Transport Commission that will provide for the implementation of all RACM and attainment of the 8-hour ozone standard as expeditiously as practicable. New York State determined that these measures represent RACM as they are reasonably available and can be expected to advance the attainment date and contribute to RFP. These measures, referred to as “Beyond On The Way” measures in the attainment modeling scenarios for the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone nonattainment area, are anticipated to provide an additional 1 to 2 parts per billion reduction benefit in the projected 2009 ozone design values beyond what was projected for “On The Books/On the Way” measures as detailed in the attainment modeling section of New York’s February 8, 2008 8-hour ozone SIP submittal.

4. What Is EPA’s Evaluation?

The State is proceeding with developing several of the additional measures identified by the Ozone Transport Commission as part of its RACT and RACM control program. EPA has reviewed New York’s RACM analysis and while EPA agrees with New York that there are no RACM that can be adopted in time to advance the moderate area attainment date of 2010 for the NYMA, EPA is proposing to disapprove New York’s RACM analysis because New York has not adopted all RACM identified and committed to by the State as reasonably available for assisting to reach attainment. EPA’s concerns with New York’s RACM analysis are the same as the concerns with New York’s RACT SIP discussed earlier.

With respect to the adoption of control measures, EPA encourages New York to accelerate its rulemaking process and adopt the RACM that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable and provide for cleaner air for the public.

V. What Are EPA’s Conclusions?

EPA is proposing to disapprove the moderate area RACM analysis for the New York portion of the New York–Northern New Jersey–Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008, “New York SIP for Ozone—Attainment Demonstration for New York Metro Area.”

EPA is also proposing to disapprove the September 1, 2006 New York RACT assessment SIP submittal, supplemented on February 8, 2008 and September 16, 2008, as it applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

VI. What Are the Consequences if EPA Finalizes the Proposed Disapproval?

If New York does not address the issues discussed in this proposed rule, and if EPA were to finalize this proposed disapproval, there could be the following consequences. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if states fail to correct any deficiencies identified by EPA in a final disapproval action within certain timeframes.

A. What Are the Act’s Provisions for Sanctions?

If EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP submittal if a state fails to make the required submittal that EPA proposes to fully or conditionally approve within that time. Under EPA’s sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of federal highway funds. EPA also has authority under section 110(m) to sanction a broader area.

B. What Federal Implementation Plan Provisions Apply If a State Fails To Submit an Approvable Plan?

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required

SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

VII. What Future Actions/Options Are Available for New York Regarding an Approvable 8-Hour Ozone SIP?

As discussed in this proposed rulemaking action, EPA has proposed certain determinations on some SIP components included in New York's 8-hour Ozone SIP submittals. EPA's proposed determinations are based on EPA's technical evaluation of the submittals and take into consideration the appropriate requirements pursuant to the Act, EPA rules and regulations, guidance and policy. EPA makes the following suggestions for correcting the identified deficiencies and strengthening New York's SIP.

Adoption of Control Measures

New York included in its 8-hour ozone SIP submittals an enforceable commitment to adopt specific measures within a specified timeframe such that the emission reductions would be achieved in time to assist in reducing ozone precursors for RFP and to achieve attainment as expeditiously as practicable. In this rulemaking, EPA is proposing to disapprove New York's RACT and RACM SIP submittal as they relate to a commitment to adopt and implement those additional measures. EPA encourages New York to accelerate its rulemaking process and adopt control measures prior to the commitment date of March 2010 for the RACT and RACM measures that have been identified and committed to by New York in order to achieve RFP and attainment of the 8-hour ozone standard as expeditiously as practicable, provide for cleaner air for the public and meet Clean Air Act requirements.

VIII. What Is the Status of New York's Reclassification Request?

EPA is in the process of evaluating New York's April 4, 2008 request to reclassify the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area from moderate to serious. Because this is a multi-state nonattainment area, EPA is evaluating its options in how best to proceed with addressing New York's request. Recently, EPA proposed to disapprove the attainment demonstrations submitted by New Jersey and Connecticut (74 FR 21578 and 74 FR 21568, respectively) for the remaining portions that make up the entire New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area.

While New York included in its February 8, 2008 8-hour ozone SIP submittal SIP elements consistent with a reclassification or serious classification schedule for achieving attainment (*i.e.*, RFP plan for 2011, 2012 and attainment demonstration for 2013), EPA is not acting on any of those elements that go beyond the Act requirements associated with a moderate area classification. EPA will address New York's reclassification request and the other relevant SIP elements in one or more separate proposed actions in the near future.

IX. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would

be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: August 14, 2009.

Barbara A. Finazzo,

Acting Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2008-0697; FRL-8948-9]

RIN 2060-AP08

Revisions to Test Method for Determining Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the voluntary test method for determining stack gas velocity taking into account the velocity decay near the stack or duct walls. When the method was originally developed, it addressed only sources where the flow measurements were made in locations with circular cross-sections. The proposed revised test method addresses flow measurement locations with both circular and rectangular cross-sections. The proposed revisions also include changes that increase the accuracy of the method and simplify its application. The primary users of the proposed method are likely to be owners and operators of utility units subject to the Acid Rain