

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the responsible Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facility to be discontinued. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission’s final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be displayed for 30 days in the USPS-operated retail facilities likely to be serving the affected customers.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service’s determination, the official closing date of the office must be published in the *Postal Bulletin*, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Vice President may provide.

**Stanley F. Mires,**  
*Chief Counsel, Legislative.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2010-1058, FRL-9288-5]

#### Approval and Promulgation of Implementation Plans; New York Reasonable Further Progress Plans, Emissions Inventories, Contingency Measures and Motor Vehicle Emissions Budgets

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on portions of a proposed State Implementation Plan revision submitted

by New York that are intended to meet several Clean Air Act requirements for attaining the 0.08 part per million 8-hour ozone national ambient air quality standards. EPA is proposing to approve: the 2002 base year emission inventory and the projection year emissions, the motor vehicle emissions budgets used for planning purposes, the reasonable further progress plan, and the contingency measures as they relate 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.

**DATES:** Comments must be received on or before May 2, 2011.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA-R02-OAR-2010-1058, by one of the following methods:

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

- *E-mail:* [Werner.Raymond@epa.gov](mailto: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-2010-1058. 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:** Raymond Forde ([forde.raymond@epa.gov](mailto:forde.raymond@epa.gov)) concerning emission inventories and reasonable further progress and Kirk Wieber ([wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov)) concerning other portions of the SIP revision, 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 proposed 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)<sup>1</sup> along with other related Clean Air Act (Act) requirements necessary to ensure attainment of the standard. The EPA is proposing to approve into the SIP the following elements: The State-wide 2002 base year emissions inventory, the ozone projection emission inventory, the motor vehicle emissions budgets used for planning purposes, the reasonable further progress (RFP) plan and the contingency measures. At this time, EPA is continuing to review the other components of the New York submissions (*i.e.*, attainment demonstrations 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 from "moderate" to "serious") and plans to address those other components of the proposed SIP submittals in one or more separate proposed actions 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 on line at <http://www.regulations.gov>, Docket number EPA-R02-OAR-2010-1058.

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

#### II. Background Information

##### A. What are the Act requirements for a Moderate 8-hour 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.<sup>2</sup> On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612), referred to as the Phase 2 Rule, which addresses the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS.

## 2. Moderate Area Requirements

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 15, 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 proposed 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 proposed 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 proposed comprehensive 8-hour ozone SIPs—one for the NYMA, 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". On December 28, 2009 and January 26, 2011, New York supplemented its February 8, 2008 submittal. The submittals included the

2002 base year emissions inventory, projection year emissions, attainment demonstrations, RFP plans, RACM analysis, RACT analysis, contingency measures and on-road motor vehicle emission budgets. These proposed 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.

With respect to the Poughkeepsie area, EPA has evaluated its air quality monitoring data and has determined the Poughkeepsie area has attained the 8-hour ozone standard. On December 7, 2009, EPA announced this determination in the **Federal Register** (74 FR 63993). Consistent with 40 CFR 51.918, this determination suspends the requirements for various SIP items, including, the requirement to submit an attainment demonstration, an RFP plan, and section 172(c)(9) contingency measures for the eight-hour ozone NAAQS for so long as the area continues to attain the ozone NAAQS. Therefore, EPA is not taking action on these proposed SIP elements for the Poughkeepsie area that are contained in the 8-hour ozone SIP proposal that was submitted to EPA on February 8, 2008. However, EPA is taking action on the 2002 base year emissions inventory 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. Additionally, on June 14, 2010, New York submitted to EPA a Clean Data Petition for the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area. At this time, EPA is continuing to review collectively 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 Clean Data Petition and plans to address New York's requests in a separate proposed action in the near future.

On July 23, 2010 (75 FR 43066), EPA conditionally approved 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 and also conditionally approved 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.

### IV. EPA's Review and Technical Information

#### A. Emission Inventories

##### 1. What are the Act requirements?

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the Act. For ozone nonattainment areas, the emissions inventory must contain volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO) emissions because these pollutants are precursors to ozone formation.

##### 2. What emission inventories were included in the SIP?

###### a. 2002 Base Year

New York submitted its proposed and final 2002 base year emissions inventories. A summary of the 2002 base year emissions inventory for the NYMA, the Poughkeepsie area and for the entire State are included in Tables 1A–2B of this action.

###### b. Projection Years

The 2002 VOC and NO<sub>x</sub> anthropogenic emissions are projected to 2008 in order to determine the VOC and NO<sub>x</sub> reductions needed for the 15 percent RFP plan for the NYMA. The 2008 projection year emission inventory was calculated by adjusting the 2002 base year inventory using factors that estimate growth from 2002 to the 2008 projection year. EPA requires specific growth factors be considered for each source type in the inventory since source emissions typically change at different rates. The 2008 projection inventory was also adjusted by the State to reflect the benefits of control measures that were adopted since the 2002 emission inventory. Table 3 shows the 2008 VOC and NO<sub>x</sub> projection emission inventory after applying the appropriate growth indicators/methodologies and expected controls to the 2002 base year emissions inventory for the NYMA.

<sup>2</sup> On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court did not vacate the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

TABLE 1A—2002 BASE YEAR INVENTORY SUMMERTIME DAILY EMISSIONS  
[In tons/day]

	NYMA			Poughkeepsie area		
	VOC	NO <sub>x</sub>	CO	VOC	NO <sub>x</sub>	CO
Point .....	10.7	174.4	39.49	3.78	17.88	2.67
Area .....	445.4	77.6	28.70	38.23	5.39	5.67
Non-road .....	283.5	186.2	2,824.03	26.48	16.93	199.65
On-road .....	236.8	327.3	2,384.72	32.46	50.33	410.39
Total .....	976.40	762.5	5,276.90	100.95	91.10	618.38

TABLE 1B—2002 BASE YEAR INVENTORY ANNUAL EMISSIONS  
[In tons/year]

	NYMA			Poughkeepsie area		
	VOC	NO <sub>x</sub>	CO	VOC	NO <sub>x</sub>	CO
Point .....	3,570	45,634	10,737	1,396	6,672	960
Area .....	152,147	54,494	23,834	18,825	3,695	19,755
Non-road .....	60,635	55,984	667,739	5,161	5,313	42,689
On-road .....	81,499	124,640	1,106,919	11,250	19,435	189,510
Total .....	297,851	280,752	1,809,229	36,632	35,115	243,914

TABLE 2A—2002 ENTIRE NEW YORK STATE EMISSIONS INVENTORY SUMMERTIME DAILY EMISSIONS  
[In tons/day]

	VOC	NO <sub>x</sub>	CO
Point .....	41.52	377.25	188.23
Area .....	855.1	162.9	148.31
Non-road .....	749.45	400.78	5,386.05
On-road .....	546.65	844.22	6,518.33
Total .....	2,192.72	1,784.65	12,240.92

TABLE 2B—2002 ENTIRE NEW YORK STATE EMISSIONS INVENTORY ANNUAL EMISSIONS  
[In tons/year]

	VOC	NO <sub>x</sub>	CO
Point .....	15,034	118,765	66,157
Area .....	503,797	98,804	356,287
Non-road .....	157,892	119,808	1,206,370
On-road .....	179,731	313,890	2,942,730
Total .....	855,454	651,267	4,571,544

TABLE 3—NYMA—2002 BASE YEAR AND 2008 PROJECTION YEAR EMISSION INVENTORIES  
[In tons/day]

	2002 base year actual inventory		2008 projection year inventory (controlled)	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	10.7	174.4	19.8	178.9
Area .....	445.4	77.6	413.6	84.4
Non-Road Mobile .....	283.5	186.2	215.1	174.4
On-Road Mobile .....	236.8	327.3	148.8	211.8
Total .....	976.40	762.5	798.4	649.5

### 3. What is EPA's evaluation?

Based on EPA's review, the 2002 base year emissions inventory for the NYMA, the Poughkeepsie area and the entire State includes essential data elements, source categories, sample calculations or report documentation to allow EPA to adequately determine if the inventory is accurate and complete. Consequently, New York's 2002 base year emissions inventory is consistent with the ozone base year emission inventory reporting requirements based on EPA guidance. Similarly, EPA has determined the 2008 projection year emissions inventory for the NYMA is consistent with the essential emission inventory reporting requirements. New York's 2002 base year inventories are consistent with the ozone base year emission inventory reporting requirements for the following reasons:

- The point and area source emissions inventory reports identify the actual activity data and emissions factors.
- Information on how rule effectiveness, control efficiencies and rule penetration, where appropriate, are applied and the associated sample calculations with numerical values are provided.
- Point and area source inventory documentation identifies emissions factors, activity levels, seasonal adjustment factors, and sample calculations. Referenced information for the input values to equations was identified.
- Point, area, non-road and on-road mobile source emissions are presented on a source by source category basis or on a county basis.
- The appropriate non-road and on-road emissions model are used.
- Annual and summertime daily point, area, non-road and on-road emissions are identified in the inventory.

New York's 2008 projection year inventory is consistent with the emission inventory reporting requirements for the following reasons:

- For projecting point, area, non-road and on-road mobile emissions, there is evidence the uncontrolled projection emission inventories were projected from 2002 to 2008 and controls applied correctly for future years.
- Point and area source inventory source documentation identify growth factors, emissions factors, activity levels, seasonal adjustment factors, and sample calculations. The referenced information for the input values into equations was included.
- Point, area, non-road and on-road projection inventories identify summary reports on a source by source basis.

With this information and documentation, EPA is able to verify the accuracy and representativeness of the base year and projection year emission inventories and whether the RFP plans are calculated correctly and result in sufficient emissions reductions towards achieving attainment.

A more detailed discussion of how the emission inventories were reviewed and the results of EPA's review are provided in the Technical Support Document (TSD) for this action. EPA is proposing to approve the 2002 base year for the NYMA and Poughkeepsie ozone nonattainment areas and the entire State and the 2008 projection year emission inventories for the NYMA area as the State used these inventories in developing the RFP plan.

New York also submitted 2008 and 2009 projection year inventories for the Poughkeepsie area and 2011 and 2012 projection year inventories for the NYMA (in support of the request for reclassification from "moderate" nonattainment to "serious"). EPA is deferring action on New York's reclassification request and the Poughkeepsie area proposed SIP revisions at this time.

#### B. Reasonable Further Progress Plans

##### 1. What are the Act requirements?

Section 182(b)(1) of the Act and EPA's 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an RFP Plan for EPA review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO<sub>x</sub> from a baseline emissions inventory.

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the Act and 40 CFR 51.910. This baseline value has been determined to be the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's MOBILE6 on-road mobile source emissions modeling software. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy

the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like those in New York, the Act requires emissions of ozone precursors be reduced by 15 percent over an initial six-year period. As discussed earlier, on November 9, 2005, EPA published the final rule to implement the 8-hour ozone standard (70 FR 71612), commonly referred to as the Phase 2 Rule. The Phase 2 Rule outlines the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment or higher. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher must meet the RFP requirement pursuant to either section 182(b)(1), using VOC emission reductions, or section 172(c)(2), using VOC and NO<sub>x</sub> emission reductions.

In the NYMA, EPA previously approved a 15 percent RFP plan for the entire nonattainment area under the 1-hour ozone standard (67 FR 5170 (February 4, 2002)). EPA's Phase 2 Rule permits emissions reductions of either VOC and/or NO<sub>x</sub> to meet the 15 percent reduction in cases where EPA previously approved a 15 percent RFP plan under the 1-hour standard, such as is the case with the NYMA. Therefore, the NYMA is subject to the 15 percent RFP requirement pursuant to section 172(c)(2) of the Act, which permits reductions of either VOC and/or NO<sub>x</sub> emission reductions to meet the 15 percent reduction.

It is important to note that section 182(b)(1) of the Act also requires the RFP plan for moderate areas to provide for reductions in VOC and NO<sub>x</sub> emissions "as necessary to attain the national primary ambient air quality standard for ozone." This requirement can be met using EPA-approved modeling techniques and the adoption of any additional control measures beyond those needed to meet the 15 percent emissions reduction requirements.

##### 2. What reasonable further progress plans were included in the SIP?

For the NYMA, New York included RFP plans for milestone years 2008, 2011 and 2012 consistent with a serious classification as requested by New York. In this notice, EPA will act on the 2008 RFP plan and defer action on the 2011 and 2012 RFP plans. Using the 2002 base year emission inventory, New York calculated an "adjusted baseline inventory" by removing the biogenic and non-creditable reductions (Federal

Motor Vehicle Control and RVP) from the base year emissions. RFP requires a minimum VOC emission reduction of 15 percent between 2002 and 2008 above any growth that occurs during this

period. The 15 percent was applied to the adjusted baseline year inventory to yield the 2008 VOC emission target levels. New York provided in its SIP submittal a 15 percent plan with the

associated control measures that would contribute towards achieving that target level of emissions for milestone year 2008 summarized in Table 4.

TABLE 4—VOC EMISSION REDUCTION MEASURES INCLUDED IN THE NEW YORK 2008 (15%) RFP PLAN

VOC Control measures	NYMA ozone NAA (tons per day)
Required Reduction in VOC to Meet 2008 Milestone .....	125.16
Point Source Control Measures .....	*42.3
Emission Reduction Credits (ERCs) .....	- 1.1
Non-Road Mobile Source Control Measures .....	0
On-Road Mobile Source Control Measures .....	
Low Emission Vehicle (LEV) 2 .....	2.5
New York Vehicle Inspection Program (NYVIP) .....	4.0
Fuels .....	8.7
Heavy Duty Diesel .....	.1
Stationary Area Source Control Measures .....	
Consumer Products .....	17.1
Portable Fuel Containers .....	13.9
Architectural and Industrial Maintenance Coatings .....	22.5
Mobile Equipment Repair .....	12.6
Solvent Metal Cleaning .....	5.3
<b>Total VOC Benefits From All Sources .....</b>	<b>129.1</b>
VOC Shortfall = (VOC Reductions Needed To Meet Target Level) – (VOC Benefits From All Sources) .....	125.16 – 129.1 = -3.94.

**VOC PLAN RESULTS IN 3.94 Tons Per Day Surplus**

\* Includes a summation of all emissions reduction from regulations that were effective prior to 2002.

Based on Table 4, New York’s VOC control plan meets the 15 Percent Plan reduction requirements. It results in 3.94 tons per day surplus.

3. What is EPA’s evaluation?

Based on the RFP calculations included in New York’s SIP submittal, New York’s VOC 15 percent control plan results in 3.94 tons per day VOC emission reduction surplus in the NYMA. New York followed EPA’s requirements and guidance in calculating the “adjusted baseline inventories,” and 2008 target level emissions, the total emission reductions (net of growth) needed from the 2008 uncontrolled projection inventory to reach the target levels for the 2008 milestone year was provided and therefore New York’s RFP demonstration is consistent with the RFP emissions inventory reporting requirements.

In addition, New York’s RFP plan is based on a 2002 base-year and projection emissions inventories, which as noted earlier in Section IV.A.3 are consistent with the emission inventory reporting requirements. New York identified how RFP will be achieved, *i.e.*, a complete list of control measures and the relevant emission reductions for each source category. New York did provide in its SIP submittal a list of

control measures that would contribute towards RFP (*see* Table 4) and there was information associated with the control measures in New York’s SIP submittal for EPA to adequately determine that RFP will be achieved for milestone year 2008.

Based on the reasons mentioned above, EPA is proposing to approve New York’s 2008 RFP plan for the NYMA.

*C. Contingency Measures*

1. What are the Act requirements?

For ozone nonattainment areas classified as moderate or above, States must include in their submittals contingency measures to be implemented if an area fails to make RFP or to attain the NAAQS by the applicable attainment date (sections 172(c)(9) and 182(c)(9)). Contingency measures are intended to achieve reductions over and beyond those relied on in the RFP and attainment demonstrations. The Act does not preclude a State from implementing such measures before they are triggered. EPA interprets the Act to require sufficient contingency measures in the submittal, so that upon implementation of such measures, additional emissions reductions of up to three percent of the adjusted base year inventory would be achieved in the year after the failure has

been identified. For a more detailed description of the contingency measures requirement please *see* the April 16, 1992 General Preamble (57 FR 13498, 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

2. What contingency measures were included in the SIP?

New York identified an additional three percent (of the adjusted base year inventory) reduction of VOC emissions, or an equivalent combination of VOC and NO<sub>x</sub>, for the NYMA to satisfy the contingency plan requirement for each milestone year. These reductions will be achieved by a host of control measures that have been adopted and implemented by New York.

3. What is EPA’s evaluation?

New York identified the necessary quantity of emissions reductions for contingency. Those calculations are based on a 2002 base-year inventory and projection inventories, which as noted earlier in Section IV.A.3 are consistent with the emission inventory reporting requirements. All of the control measures identified in Table 4 and used to make the necessary reductions for contingency have been adopted and implemented by New York. EPA has determined that New York’s SIP

adequately addresses the RFP contingency plans for the NYMA consistent with the Act, as interpreted in EPA's regulations, guidance and policies. Therefore, EPA is proposing to approve New York's RFP contingency plans for the NYMA.

*D. Motor Vehicle Emissions Budgets*

1. What are the Act requirements?

Section 176(c)(1)(A) of the Act requires that Federal actions in nonattainment and maintenance areas "conform to" the SIPs and that such actions will not: (a) Cause or contribute to any new violation of any NAAQS in any area; (b) increase the frequency or severity of any existing violation of any NAAQS in any area; or (c) delay timely attainment of any NAAQS or delay any required interim emissions reduction milestone in any area (section

176(c)(1)(B) of the Act). Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with State air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans ("plans") and transportation improvement programs (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit projects are less than or equal to the motor vehicle emissions budgets ("budgets") contained in a SIP. The General

Conformity regulation (40 CFR part 93, subpart B) requires actions initiated by other Federal agencies in nonattainment and maintenance areas to also conform to the SIP. One option for Federal agencies to demonstrate general conformity is to meet facility-wide emissions budgets that are specified in the SIP. New York has not chosen to establish facility-wide emissions budgets for any major Federal facilities in the SIP.

2. What motor vehicle emissions budgets were included in the SIP?

In its February 8, 2008 SIP submittals, New York established 2008, 2011, and 2012 on-road motor vehicle emission budgets for the NYMA 8-hour moderate ozone nonattainment area. Table 5 lists the New York on-road motor vehicle emissions budgets.

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGETS SUBMITTED BY NEW YORK  
[Tons per day]

8-Hour Ozone Nonattainment Area	2008		2011		2012	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
NYMA .....	148.85	211.77	120.93	163.84	111.08	147.43

3. What is EPA's evaluation?

EPA is proposing to approve the 2008 RFP on-road motor vehicle emissions budgets established for the NYMA because these budgets are based on a 2002 base year emissions inventory that is consistent with the emission inventory reporting requirements and EPA guidance, as discussed in Section IV.A. A more detailed discussion of how the emission inventories were reviewed and the results of these reviews are provided in section IV.A and the TSD for this action. EPA is also proposing approval of these budgets because EPA has now completed its review of the overall RFP plan which demonstrates the required percent reductions needed for the plan approval. The 2008 RFP on-road budgets are consistent with the overall RFP plan. EPA is deferring action on the 2011 and 2012 motor vehicle emission budgets for the NYMA, submitted by New York in support of its reclassification request, until action is taken on the submitted attainment demonstration for this area.

**V. What are EPA's conclusions?**

EPA is proposing to approve into the SIP the following elements which are required by the Act: 2002 base year emissions inventory, the 2008 ozone projection year emissions inventories, the 2008 motor vehicle emissions

budgets used for planning purposes, the 2008 RFP plan, and the contingency measures for failure to meet the 2008 RFP plan milestone as they apply to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area. These elements were submitted to EPA by New York in a package entitled "New York SIP for Ozone—Attainment Demonstration for New York Metro Area," dated February 8, 2008 and supplemented on December 28, 2009 and January 26, 2011.

EPA is also proposing to approve: The 2002 base year emissions inventory for the Poughkeepsie 8-hour ozone moderate nonattainment area and the State-wide 2002 base year emissions inventory, submitted by New York on February 8, 2008 and supplemented on December 28, 2009 and January 26, 2011.

EPA is not taking action at this time on New York's attainment demonstration, reclassification request (and relevant SIP elements associated with a reclassification) or Clean Data Petition for the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area, but will do so in one or more proposed actions in the near future.

**VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2011.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2011-7631 Filed 3-30-11; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2009-0108]

#### Final Vehicle Safety Rulemaking and Research Priority Plan 2011-2013

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Plan availability.

**SUMMARY:** This document announces the availability of the Final NHTSA Vehicle

Safety and Fuel Economy Rulemaking and Research Priority Plan 2011-2013 (Priority Plan) in Docket No. NHTSA-2009-0108. This Priority Plan is an update to the Final Vehicle Safety Rulemaking and Research Priority Plan 2009-2011 (October 2009 Plan) that was announced in the November 9, 2009, edition of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

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*Telephone:* 202-366-0361. *E-mail:* [joseph.carra@dot.gov](mailto:joseph.carra@dot.gov).

**SUPPLEMENTARY INFORMATION:** On November 9, 2009, NHTSA published a Final Notice in the **Federal Register** (74 FR 57623) announcing the availability of the October 2009 Plan. Today's document announces the availability of the Final NHTSA Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan 2011-2013.

This plan is an internal management tool as well as a means to communicate to the public NHTSA's highest priorities to meet the Nation's motor vehicle safety challenges. Among them are programs and projects involving rollover crashes, children (both inside as well as just near vehicles), motorcoaches and fuel economy that must meet Congressional mandates or Secretarial commitments. Since these are expected to consume a significant portion of the agency's rulemaking resources, they affect the schedules of the agency's other priorities listed in this plan. This plan lists the programs and projects the agency anticipates working on even though there may not be a rulemaking planned to be issued by 2013, and in several cases, the agency doesn't anticipate that the research will be done by the end of 2013. Thus, in some cases the next step would be an agency decision in 2013 or 2014.

For purposes of apprising the public on the status of progress relative to the efforts delineated in the October 2009 Plan, NHTSA has included in the current Priority Plan a section (Section V) that compares the October 2009 Plan to the current Priority Plan.

Interested persons may obtain a copy of the plan, "Final Vehicle Safety Rulemaking and Research Priority Plan 2011-2013," by downloading a copy of the document. To download a copy of the document, go to <http://www.regulations.gov> and follow the online instructions, or visit Docket Management Facility at U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground

Floor, Room W12-140, Washington, DC 20590-0001 and reference Docket No. NHTSA-2009-0108.

**Authority:** 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**Ronald L. Medford,**

*Deputy Administrator.*

[FR Doc. 2011-7433 Filed 3-30-11; 8:45 am]

**BILLING CODE 4910-59-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 100803320-1201-01]

**RIN 0648-AY93**

#### Fisheries in the Western Pacific; Mechanism for Specifying Annual Catch Limits and Accountability Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish procedures and timing for specifying annual catch limits (ACLs) and accountability measures (AMs) for western Pacific fisheries. The proposed rule is procedural in nature, and is intended to help NMFS end and prevent overfishing, rebuild overfish stocks, and achieve optimum yield.

**DATES:** Comments on the proposed rule must be received by May 16, 2011.

**ADDRESSES:** Comments on this proposed rule, identified by 0648-AY93, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>; or

- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

*Instructions:* Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without