

expenses that have been financed) maintains a loan to value ratio of 100 percent or less; or

(C) The lower interest rate is produced solely from discount points, more than one discount point is added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value ratio of 90 percent or less.

(iii) Pursuant to paragraph (a)(4)(i) of this section, no more than two discount points may be added to the loan amount.

(iv) In cases where the lower interest rate is not produced solely from discount points, as described by paragraph (a)(10)(ii)(A) of this section, lenders must provide to the Secretary evidence that the lower interest rate is not produced solely from discount points.

(v) Lenders must use a property valuation from an appraisal report, completed no earlier than 180 days before the note date, as the dollar amount for the value in the loan to value ratio described by paragraph (a)(10)(ii) of this section. The appraisal report must be completed by a licensed appraiser and the appraiser's license must be active at the time the appraisal report is completed. A veteran may only be charged for one such appraisal report. A veteran may only be charged for such appraisal report as part of the flat charge not exceeding 1 percent of the amount of the loan, as described by § 36.4313(d)(2). While a lender may use a VA-designated fee appraiser to complete the appraisal report, lenders should not request an appraisal through VA systems unless directed by the Secretary.

(11) *Net tangible benefit.* The refinancing loan must provide a net tangible benefit to the veteran. For the purposes of this section, net tangible benefit means that the refinancing loan is in the financial interest of the veteran. The lender of the refinancing loan must provide the veteran with a net tangible benefit test. The net tangible benefit test must be satisfied. The net tangible benefit test is defined as follows:

(i) The refinancing loan must meet the requirements prescribed by paragraphs (a)(8), (9), and (10) of this section.

(ii) The lender must provide the veteran with an initial loan comparison disclosure and a final loan comparison disclosure of the following:

(A) The loan payoff amount of the refinancing loan, with a comparison to the loan payoff amount of the loan being refinanced;

(B) The type of the refinancing loan, whether a fixed-rate loan, traditional

adjustable-rate loan, or hybrid adjustable-rate loan, with a comparison to the type of the loan being refinanced;

(C) The interest rate of the refinancing loan, with a comparison to the current interest rate of the loan being refinanced;

(D) The term of the refinancing loan, with a comparison to the term remaining on the loan being refinanced; and

(E) The dollar amount of the veteran's monthly payment for principal and interest under the refinancing loan, with a comparison to the current dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced.

(iii) The lender must provide the veteran with an initial loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides the Loan Estimate, required under 12 CFR 1026.19(e), to the veteran. If the lender is required to provide to the veteran a revised Loan Estimate under 12 CFR 1026.19(e) that includes any of the revisions described by paragraph (a)(11)(iv) of this section, the lender must provide to the veteran, on the same date the revised Loan Estimate must be provided, an updated loan comparison disclosure.

(iv) The revisions described by this paragraph (a)(11)(iv) are:

(A) A revision to any loan attribute that must be compared pursuant to paragraph (a)(11)(ii) of this section;

(B) A revision that affects the recoupment under paragraph (a)(8) of this section; and

(C) Any other revision that is a numeric, non-clerical change.

(v) The lender must provide the veteran with a final loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides to the veteran the Closing Disclosure required under 12 CFR 1026.19(f). The veteran must certify, following receipt of the final loan comparison disclosure, that the veteran received the initial and final loan comparison disclosures required by this paragraph.

(vi) Regardless of whether the lender must provide the veteran with a Loan Estimate under 12 CFR 1026.19(e) or a Closing Disclosure under 12 CFR 1026.19(f), the lender must provide the veteran with the initial and final loan comparison disclosures. Where the lender is not required to provide the veteran with a Loan Estimate or a Closing Disclosure because the refinancing loan is an exempt transaction under 12 CFR 1026.3, the lender must provide the veteran with the initial and final loan comparison

disclosures on the dates the lender would have been required to provide the veteran with the Loan Estimate under 12 CFR 1026.19(e) and the Closing Disclosure under 12 CFR 1026.19(f), respectively, as if the refinancing loan was not an exempt transaction.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0601)

(Authority: 38 U.S.C. 3703, 3709, and 3710)

- 3. Amend § 36.4313 by:
 - a. Revising paragraph (d)(1)(i); and
 - b. In paragraph (e)(1)(i), removing the word "and" and adding, in its place, the word "or".

The revisions read as follows:

§ 36.4313 Charges and fees.

* * * * *

(d) * * *

(1) * * *

(i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except the following: (A) Appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender; and

(B) Appraisal fees incurred for the purpose specified by § 36.4307(a)(10)(v) of this subpart.

* * * * *

[FR Doc. 2022-23387 Filed 10-31-22; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2022-0169; FRL-9610-01-R2

Approval of Air Quality Implementation Plans; New York; Gasoline Dispensing Stage I, Stage II, and Transport Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to gasoline dispensing sites and transport vehicles. The intended effect of today's

action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain national ambient air quality standards for ozone and will reduce volatile organic compounds throughout the State.

DATES: Written comments must be received on or before December 2, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2022–0169 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3382, or by email at banon.ysabel@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of New York’s SIP Revision
- III. The EPA’s Evaluation of New York’s SIP Revision
- IV. The EPA’s Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background

On March 3, 2021, the New York State Department of Environmental Conservation (NYSDEC) submitted a revision to its SIP. The submitted SIP revision included changes resulting from New York’s repeal and replacement of Title 6 of New York Codes, Rules and Regulations (NYCRR), part 230, “Gasoline Dispensing Sites and Transport Vehicles.” These revisions to 6 NYCRR part 230 eliminate Stage II vapor recovery systems

requirements and require the decommissioning of existing Stage II vapor recovery systems; strengthen Stage I vapor recovery requirements; and require that transport vehicles meet current federal United States Department of Transportation (DOT) requirements. On September 17, 2021, NYSDEC submitted a supplemental analysis, “New York State Stage II Removal Analysis 2020,” to demonstrate its justification of Stage II removal; this analysis is included in the docket for this action. Attendant revisions to 6 NYCRR section 200, “General Provisions,” section 200.9, Table 1, “Referenced material”, related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

Ozone Requirements

New York is classified as nonattainment for the 2008 and 2015 ozone national ambient air quality standards (NAAQS) for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT area (also known as the New York Metropolitan Area, or NYMA).¹ New York is also a member state of the Ozone Transport Region (OTR), which means it must meet certain requirements for nonattainment areas regardless of its attainment status. The Clean Air Act (CAA) section 182(b)(2)(A) requires that for ozone nonattainment areas classified as moderate or above, states must revise their SIPs to include provisions to implement Reasonably Available Control Technology (RACT) for each category of volatile organic compound (VOC) sources covered by a Control Techniques Guidelines (CTG) document. The CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found within the CTG either via the adoption of regulations, or by issuance of single source orders or permits that outline what the source is required to do to meet RACT.

Stage I Vapor Recovery Systems

Stage I vapor recovery systems are systems that capture hydrocarbon vapors, such as VOCs, displaced from storage tanks at gasoline dispensing facilities (GDFs) during gasoline tank truck deliveries. When gasoline is

delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the transport vehicle’s (delivery truck’s) tank. Some vapors are vented to the atmosphere when the storage tank exceeds a specified pressure threshold, however, the Stage I vapor recovery systems greatly reduce the displaced vapors being released into the atmosphere. Stage I vapor recovery systems have been in place since the 1970s, and the EPA guidance regarding use of Stage 1 systems to control VOC emissions from this source category (gasoline service stations) has been in place since 1975.²

In more recent years, the California Air Resources Board (CARB) has required Stage I vapor recovery systems capable of achieving vapor control efficiencies higher than those achieved by traditional Stage I systems. These newer systems are commonly referred to as Enhanced Vapor Recovery (EVR) systems. One of the essential components of these CARB Stage I EVR systems are improved pressure/vacuum vent valves (CARB EVR Pressure/Vacuum (P/V) vent valves). These valves are manufactured with better quality materials and construction than non-CARB EVR P/V vent valves and are thus expected to decrease emissions by reducing P/V vent valve failures that make Stage 1 vapor recovery systems less effective.

Stage II Vapor Recovery Systems and Onboard Refueling Vapor Recovery Systems

Stage II vapor recovery systems and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at gasoline

² See U.S. EPA, “Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,” (Nov. 1975, EPA Online Publication EPA–450/R–75–102), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt>; U.S. EPA, “Control Techniques Guidelines for the Oil and Natural Gas Industry” (Nov. 2016 EPA Online Publication EPA–453/B–16–001), available at <https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf> (providing control techniques guidelines for control of VOC emissions from the gasoline service station source category); and U.S. EPA, “Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System,” (Dec. 1978 EPA Online Publication EPA–450/2–78–051), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000M9RD.txt> (providing guidelines related to the control of VOC leaks from and test procedures for gasoline tank trucks and vapor collection systems at terminals, bulk plants and service stations).

¹ The New York portion of the NYMA is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, and Rockland. See 40 CFR 81.333.

dispensing facilities and capture the refueling fuel vapors at the gasoline pump. The Stage II system carries the captured vapors back to an underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Stage II vapor recovery systems and vehicle ORVR systems were initially both required by the 1990 Amendments to the CAA. Section 182(b)(3) of the CAA requires moderate and above ozone nonattainment areas to implement Stage II vapor recovery programs. CAA section 184(b)(2) also requires states in the OTR to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these ORVR requirements on April 6, 1994, at which point, in accordance with CAA section 202(a)(6), moderate ozone nonattainment areas were no longer subject to the CAA section 182(b)(3) Stage II vapor recovery program requirements. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998 and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. *See*, 59 FR 16262, April 6, 1994. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006. *See*, 77 FR 28772, May 16, 2012.

Historically, Stage II vapor recovery systems have provided VOC reductions in ozone nonattainment areas and certain attainment areas of the OTR. However, Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies, and CAA section 206(a)(6) provided authority to EPA to allow states to remove Stage II vapor recovery programs from their SIPs after EPA finds that ORVR is in “widespread use.” Effective May 16, 2012, EPA determined in a rulemaking that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. *See*, 77 FR 28772, May 16, 2012. As of 2012, EPA estimated in a guidance document that by the end of 2020 more than 94 percent of gasoline refueling nationwide would

occur with ORVR-equipped vehicles.³ Thus, Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever-declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.⁴

The EPA’s May 16, 2012, rulemaking also took two other relevant actions. First, the EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II vapor recovery systems at GDFs. As a result, new ozone nonattainment areas classified serious or above do not need to adopt Stage II vapor recovery programs. Second, the EPA stated that any state currently implementing Stage II vapor recovery programs may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems.

II. Summary of New York’s SIP Revision

The version of 6 NYCRR part 230 that is currently incorporated into the New York SIP was last revised in 1998. *See*, 63 FR 23665, April 30, 1998.

On March 3, 2021, NYSDEC submitted to the EPA a SIP revision to incorporate into the New York SIP changes to the New York regulations resulting from its repeal and replacement of 6 NYCRR part 230, “Gasoline Dispensing Sites and Transport Vehicles.” On September 17, 2021, NYSDEC submitted supplemental material including an analysis justifying its Stage II removal based on data for the year 2020.

In its rulemaking to revise part 230, NYSDEC explains that the changes being addressed in today’s proposed action will reduce VOC emissions from GDFs and transport vehicles across the State. A gasoline dispensing site is a federally regulated GDF if it has gasoline storage tank(s) greater than 250 gallons.

Stage I

NYSDEC’s SIP submittal includes New York regulations that adopt EPA’s control measures for federal “enhanced” Stage I vapor recovery, submerged fill,

³ *See* Appendix Table A–1 of EPA’s Guidance Document, “Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures” (EPA–557/B–12–001; August 7, 2012).

⁴ In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems actually result in lower overall control system efficiency than what could have been achieved individually by either ORVR or the Stage II vapor recovery system.

dual-point vapor control systems, new performance test requirements and best management practices outlined in 40 CFR part 63, subpart CCCCC (Subpart 6C). The updated part 230’s incorporation of federal “enhanced” Stage I controls will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing SIP regulation currently requires. The SIP revision would also extend these same federal requirements to medium-sized GDFs with annual throughputs between 800,000 and 1,200,000 gallons to achieve further reductions in emissions from the New York portion of the NYMA.

New York’s revised part 230 includes submerged filling requirements for all gasoline storage tanks at GDFs that have gasoline storage tanks with capacities greater than 60 gallons, to be consistent with the State Fire Code. New York explains that this will minimize the generation of gasoline vapors caused by splash loading. Submerged filling reduces vapor emissions by dispensing gasoline through a fill pipe that extends to within 6 inches of the bottom of the tank.

The updated part 230 submitted for SIP approval incorporates the federal requirements of Subpart 6C to equip new or reconstructed gasoline storage tanks with dual-point vapor control systems. Equipping storage tanks with both an entry port for a gasoline fill pipe and a separate exit port for a vapor connection is necessary to maintain a proper seal when the vapor recovery line is disconnected. As with the federal Stage I vapor recovery requirements, NYSDEC’s submitted SIP revision would extend this requirement to medium-sized GDFs in the New York portion of the NYMA to achieve greater reductions in VOC emissions. The SIP revision would also require performance testing for vapor recovery systems in accordance with the federal performance test requirements once every three years, which NYSDEC explains will ensure more consistent vapor capture at GDFs and would extend the federal testing requirements to medium-sized GDFs in the New York portion of the NYMA. Other federal requirements included in the revised part 230 submitted as part of this SIP revision include best management practices to minimize the amount of VOC released from spills and uncovered gasoline storage containers. These measures will apply to all GDFs with annual throughputs of 120,000 gallons or greater.

NYSDEC’s SIP revision does include some exemptions from Stage I requirements. Gasoline storage tanks

with a capacity of less than 550 gallons and which are used exclusively for farm tractors engaging in agricultural or snowplowing activity and automobile dismantling facilities would be exempt from the Stage I requirements, because it would not be cost effective to require these facilities to install vapor recovery systems. Auto dismantling facilities would also be exempt from the Stage I requirements because, since they are not handling gasoline delivered by cargo truck, there are no cargo trucks into which to return captured vapors. Instead, these facilities fill storage tanks with gasoline collected from drained and dismantled vehicles. There are approximately 800 of these auto dismantling facilities located throughout New York State which handle a small volume of gasoline per year.

NYSDEC's submitted SIP revision would require test companies to certify that Stage I vapor recovery system tests will be performed in accordance with federal regulation testing procedures and protocols. The SIP revision would also incorporate a revised version of 6 NYCRR § 230.7 that removes the information regarding registration schedules from the prior version because the schedules for compliance have already been completed. The SIP revision would expand on the federal requirements by requiring medium-sized GDFs located in the New York portion of the NYMA with annual throughput between 800,000 and 1,200,000 gallons to come into compliance with the applicable requirements that would otherwise apply to large GDFs within six months of the effective date of February 12, 2021, to achieve greater VOC emission reductions in the ozone nonattainment area.

Transport Vehicles

The proposed SIP revision would require leak testing and test markings that coincide with the Federal DOT testing and marking requirements at 49 CFR 180.415 & 180.407(h), making these testing and marking requirements consistent at the state and federal level. See, 6 NYCRR section 230.6 and Table 1 in 6 NYCRR section 200.9. Gasoline transport vehicle recordkeeping retention requirements would be raised from 2 years to 5 years (see, 6 NYCRR section 230.7), which aligns with the recordkeeping requirements in the federal Subpart 6C. Furthermore, no operator of a gasoline transport vehicle would be allowed to transfer gasoline into a gasoline storage tank with a Stage I vapor recovery system unless the transport vehicle operator ensures that

prescribed gasoline transfer operator practices are met to prevent VOC emissions, such as the 6 NYCRR section 230.6(b)(2) requirement that operators ensure the tank truck vapor return equipment is compatible in size and forms a vapor tight connection with the vapor balance equipment on the gasoline storage tank.

Stage II

The proposed SIP revision would also require decommissioning and removal of all Stage II vapor recovery systems, due to the equipment's incompatibility with ORVR systems. GDFs required to remove Stage II vapor recovery systems must do so by 12 months after the effective date of the State rule. Within 30 days of the decommissioning of the Stage II vapor recovery system, the GDF must provide documentation to the NYSDEC of the procedures it used to demonstrate that the Stage II system has been decommissioned in accordance with part 230 and has passed the CARB Vapor Recovery Test Procedure TP-201.3—Determination of 2-inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities. See, 6 NYCRR 230.3(d)(1)(x).

SIP Demonstration

NYSDEC's March 3, 2021, SIP revision and the updated analysis submitted on September 17, 2021, include a narrative demonstration supporting the discontinuation of the Stage II vapor recovery program. This demonstration, discussed in greater detail below, consists of an analysis showing that the Stage II vapor recovery controls now provide only *de minimis* emission reductions due to the prevalence of ORVR-equipped vehicles in New York in 2020.

Withdrawal of Prior SIP Submittal

Additionally, NYSDEC is also requesting withdrawal of its prior January 31, 2011, submittal to the EPA requesting inclusion in the SIP of a collection of RACT variances given to GDFs for Stage II requirements under part 230, since these variances would no longer be needed once Stage II vapor recovery systems are not required. Given this withdrawal, the January 31, 2011, SIP submittal is no longer before the EPA.

III. EPA's Evaluation of New York's SIP Revision

The EPA reviewed NYSDEC's March 3, 2021, proposed SIP revision to update the 6 NYCRR part 230, "Gasoline Dispensing Sites and Transport Vehicles," portion of the New York SIP to reflect NYSDEC's repeal and

replacement of 6 NYCRR part 230 that was effective as of February 12, 2021, along with the analysis New York submitted on September 17, 2021, to demonstrate justification of Stage II removal for the year 2020, and the accompanying SIP narrative. EPA concludes that NYSDEC's proposed SIP revision is consistent with EPA's widespread use rule (77 FR 28772, May 16, 2012) and EPA's "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures" (EPA-457/B-12-001; August 7, 2012) (referred to below as the "EPA Guidance Document").

In reviewing the proposed SIP revision, the EPA must ensure that: 1) In accordance with CAA section 110(l)'s non-interference requirement, NYSDEC has demonstrated that the proposed action would not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) for ozone; 2) in accordance with CAA section 184(b)(2)'s "comparable measures" requirement, that the proposed action would achieve comparable or greater emission reductions than the gasoline vapor recovery requirements contained in CAA section 182(b)(3); and 3) that the proposed action satisfies the anti-backsliding requirements of CAA section 193. As discussed below, the EPA finds that NYSDEC has demonstrated widespread use of ORVR systems throughout the motor vehicle fleet and that implementation of the rule in the proposed SIP revision would comply with CAA sections 110(l), 184(b)(2), and 193.

CAA section 110(l) specifies that the EPA cannot approve a SIP revision if it would interfere with attainment of NAAQS or reasonable further progress towards attainment, or any other applicable requirement of the CAA; this is commonly referred to as "anti-backsliding." New York's SIP revision submittal includes a CAA section 110(l) anti-backsliding demonstration (based on equations provided in the EPA Guidance Document)⁵ that shows there would be zero potential loss of emission reductions from removing Stage II vapor recovery systems in 2020. If the value is zero or negative, this would indicate that removing Stage II systems would not increase refueling emissions. Thus, the SIP revision will not interfere with attainment of NAAQS, reasonable further progress towards attainment, or

⁵ For further discussion of this equation, see The EPA Guidance Document at 13–14.

any other applicable requirement of the CAA.

Because New York is located in the northeast OTR, under CAA section 184(b)(2)'s "comparable measures" requirement, the State must show that its SIP revisions include control measures capable of achieving emission reductions comparable to those achievable through Stage II Systems under CAA section 182(b)(3). As stated in the EPA Guidance Document, "the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis*, incremental loss of area-wide emission control." NYSDEC conducted a statewide comparable measure analysis in accordance with the EPA Guidance Document that shows that phasing out the Stage II program would result in zero or *de minimis*⁶ incremental loss of area wide emission control. The revision to the SIP thus satisfies the comparable measures requirement of CAA section 184(b)(2). As stated in the EPA Guidance Document, "the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis*, incremental loss of area-wide emission control." According to NYSDEC's analysis, the increment is -0.0215. The EPA Guidance Document explains that a zero or negative increment value indicates that removing Stage II, "would not increase the refueling emissions inventory because the higher efficiency from ORVR and the incompatibility emissions offset the increment due to non-ORVR vehicles being refueled at Stage II GDFs."⁷ Thus, compliance with CAA section 184(b)(2) is demonstrated and the revision to the SIP satisfies the comparable measures requirement.

Similarly, CAA section 193, which applies to nonattainment areas for any air pollutant in states that adopted Stage II control programs into their SIP prior to November 15, 1990, prohibits modification of any control requirement unless the modification insures equivalent or greater emission reductions for that air pollutant. The State used the EPA Guidance Document's "Delta Equation" to show the removal of Stage II Systems will have no impact on area-wide emission reductions based on the difference between Stage II and ORVR efficiencies.

⁶ The EPA Guidance Document explains that the incremental emissions control that Stage II achieves beyond ORVR is *de minimis* if it is less than 10 percent of the area-wide emissions inventory associated with refueling highway motor vehicles. The EPA Guidance Document at 6.

⁷ EPA Guidance Document at 14.

The State demonstrated that for the year 2020, the ORVR program provides 41.9% greater emission reductions than the Stage II control program alone. In addition, NYSDEC's SIP revision submittal includes calculations illustrating that the overall emissions effect of removing the Stage II vapor recovery program would be zero tons in 2020. Thus, compliance with CAA section 193 is demonstrated because the SIP modification insures equivalent or greater emission reductions.

With respect to Stage I vapor recovery requirements, NYSDEC's proposed SIP revision adopts the control measures for federal "enhanced" Stage I vapor recovery, submerged fill, dual-point vapor control systems, new performance test requirements and best management practices outlined in Subpart 6C. The updated part 230 included in the proposed SIP revision incorporates federal "enhanced" Stage I controls, which will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing regulation currently requires. Thus, the proposed SIP revisions meet the requirements of CAA sections 110(I), 184(b)(2) and 193.

New York's January 31, 2011, submittal to EPA of RACT variances for SIP approval that listed gasoline dispensing facilities receiving variances from Stage II control requirements and provided associated economic feasibility analysis is being withdrawn because the portion of 6 NYCRR part 230 that regulated Stage II vapor recovery systems has been repealed. As stated above, given this withdrawal, the January 31, 2011, SIP submittal is no longer before EPA and will not be incorporated into the New York SIP.

IV. Proposed Action

The EPA proposes to approve NYSDEC's March 3, 2021, proposed revision to the New York SIP that would replace the version of Title 6 of the New York Codes, Rules and Regulations, Part 230, "Gasoline Dispensing Sites and Transport Vehicles," currently included in the New York SIP with the version having a State effective date of February 12, 2021. The EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS. Attendant revisions to 6 NYCRR part 200, "General Provisions," section 200.9, Table 1, "Referenced material," related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

The EPA is soliciting public comment on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 230, "Gasoline Dispensing Sites and Transport Vehicles," as described in section III. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 this action does not involve technical standards; 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 proposed rule revising the New York SIP to incorporate changes to 6 NYCRR part 230 and Table 1 in 6 NYCRR 200.9 is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and Part 81

[EPA–R09–OAR–2022–0815; FRL–10250–01–R9]

Finding of Failure To Attain and Reclassification as Serious Nonattainment for the 2012 Annual Fine Particulate Standard: Plumas County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Plumas County nonattainment area failed to attain the 2012 annual fine particulate matter (“PM_{2.5}”) national

ambient air quality standard (NAAQS or “standard”) by the December 31, 2021 “Moderate” area attainment date. This proposed determination is based on ambient air quality monitoring data from 2019 through 2021. If the EPA finalizes this determination as proposed, then Clean Air Act (CAA or “Act”) section 188(b)(2) requires that the nonattainment area be reclassified to Serious by operation of law. Within 18 months from the effective date of a reclassification to Serious, the State must submit a revision to its State Implementation Plan (SIP) that complies with the statutory and regulatory requirements for Serious PM_{2.5} nonattainment areas.

DATES: Any comments must arrive by December 1, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0815 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Michael Dorantes, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3934, dorantes.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background and Regulatory Context

A. The 2012 Annual PM_{2.5} National Ambient Air Quality Standard

Under section 109 of the Clean Air Act, the EPA has established NAAQS for certain pervasive air pollutants (referred to as “criteria pollutants”) and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious adverse health effects are associated with exposures to these criteria pollutants.¹

Particulate matter includes particles with diameters that are generally 2.5 microns or smaller (PM_{2.5}), and particles with diameters that are generally 10 microns or smaller (PM₁₀). PM_{2.5} can be emitted by sources directly into the atmosphere as a solid or liquid particle (“primary PM_{2.5}” or “direct PM_{2.5}”) or can be formed in the atmosphere (“secondary PM_{2.5}”) as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_x), sulfur dioxide (SO₂), volatile organic compounds (VOC), and ammonia (NH₃).²

Epidemiological studies have shown statistically significant correlations between elevated PM_{2.5} levels and detrimental effects to human health and

¹ For a given air pollutant “primary” NAAQS are those determined by the EPA as requisite to protect the public health, allowing an adequate margin of safety, and “secondary” standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

² 80 FR 15340, 15342 (March 23, 2015).