

Dated: November 4, 2023.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2023-24846 Filed 11-8-23; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2022-0648, FRL-11358-02-R2]

### Approval and Promulgation of Implementation Plans; New York; Elements of the 2008 and 2015 Ozone National Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New York for purposes of certifying and meeting the requirements for Reasonably Available Control Technology (RACT) for the Serious classification of the 2008 and Moderate classification of the 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS). The EPA is also approving that this SIP revision fulfills SIP requirements pertaining to the Ozone Transport Region (OTR) for the 2015 Ozone NAAQS. The EPA is approving the demonstration portion of the comprehensive SIP revision submitted by New York that certifies that the State has satisfied the requirements for an Ozone nonattainment new source review program, certifies that the State has satisfied the requirements for a nonattainment emission inventory, and certifies that the State has satisfied the requirements for clean fuels for fleets. In addition, the EPA is approving New York's reasonable further progress plans and motor vehicle emissions budgets for both the Moderate and Serious classifications of the 2008 ozone NAAQS. These actions are being taken in accordance with the requirements of the Clean Air Act.

**DATES:** This final rule is effective on December 11, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2022-0648. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified

Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at [Taveras.Fausto@epa.gov](mailto:Taveras.Fausto@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### Table of Contents

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What is the background for this action?

On August 25, 2023 (88 FR 58202), the EPA proposed to approve a SIP revision submitted by the State of New York on January 29, 2021, for purposes of meeting the requirement for Reasonably Available Control Technology (RACT)<sup>1</sup> for the 2008 8-hour Ozone NAAQS in New York's portion of the New York-Northern New Jersey-Long Island (NJ-NJ-CT) nonattainment area (also referred to as the New York Metro Area or NYMA) for the Serious classification. The EPA also proposed to approve that same submittal for meeting New York's RACT requirements for the 2015 8-hour Ozone NAAQS in the NYMA and for meeting the State's requirements for statewide RACT for the 2015 8-hour Ozone NAAQS within the Ozone Transport Region (OTR). The State's January 2021 SIP submittal consists of a RACT certification demonstration that New York continues to meet the RACT requirements for the two precursors for ground-level ozone, *i.e.*, oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 8-hour ozone standard. Therefore, the EPA proposed to approve New York's January 2021

<sup>1</sup> The 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 (44 FR 53762, September 17, 1979).

RACT SIP submittal as it applies to non-control technique guideline (non-CTG) major sources of VOCs, CTG sources of VOCs and to major sources of NO<sub>x</sub>.

In the August 25, 2023, notice of proposed rulemaking, the EPA also proposed to approve portions of a comprehensive SIP revision submitted by the State of New York on November 29, 2021, certifying that the State has satisfied the requirements for: (1) An Ozone nonattainment new source review (NNSR) program which applies to NO<sub>x</sub> and VOC emissions from stationary sources; (2) a nonattainment emission inventory; and (3) clean fuels for fleets. The EPA also proposed to approve New York's reasonable further progress plans and motor vehicle emission budgets (transportation conformity budgets or Budgets) for the Serious classifications of the 2008 Ozone NAAQS in the NYMA. In the August 25, 2023, notice of proposed rulemaking, the EPA also proposed to approve New York's reasonable further progress and transportation conformity budgets for the Moderate classification of the 2008 Ozone NAAQS in the NYMA, which was submitted by the State on November 13, 2017.

In New York's January 29, 2021, RACT submittal for the Serious classification of the 2008 Ozone standard, Moderate classification for the 2015 Ozone Standard, and OTR requirements related to the 2015 ozone NAAQS, New York recertified that its previously approved negative declaration for various CTGs remain valid. New York certified that there are no sources located in the State for the following six CTGs: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. In the August 25, 2023, notice of proposed rulemaking, the EPA proposed that the State's negative declaration for the six CTGs listed above remain valid and satisfies the requirements for the 2008 Ozone NAAQS Serious classification, the 2015 Ozone Standard Moderate classification and requirements associated with the OTR for the 2015 Ozone NAAQS. Therefore, within this action the EPA is certifying that the previously approved State's negative declaration remains valid for these six CTGs for the 2008 Ozone NAAQS Serious classification, the 2015 Ozone Standard Moderate classification and the requirements associated with the OTR for the 2015 Ozone NAAQS. See 82

FR 58342 (December 12, 2017); 40 CFR 52.1683(a) and (b).

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's August 25, 2023, proposed rulemaking (88 FR 58202).

## II. What comments were received in response to the EPA's proposed action?

In response to EPA's August 25, 2023, proposed rulemaking on New York's SIP revisions, the EPA received only one comment during the 30-day public comment period. The specific comment may be viewed under Docket ID Number EPA-R02-OAR-2022-0648 on the <https://regulations.gov> website.

*Comment:* A private citizen commenter living in the New York Metropolitan Area supports the EPA's proposed approval of New York's SIP revision because ". . . approving this SIP would help push the State of New York, especially the Metropolitan Area to closer meet the 8-hour Ozone NAAQS . . ." and that ". . . these new revisions all overall help the betterment of the air quality in New York by providing [the State] the programming and provisions needed to improve their air quality and public health."

*Response:* The EPA acknowledges the commenter's support of the EPA's proposed rule.

This concludes our response to the comments received. No changes have been made to the proposed rule as a result of the comments received.

## III. What action is the EPA taking?

The EPA is approving New York's RACT certification submittal dated January 29, 2021, for purposes of meeting the requirements for RACT for the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS or standard) in New York's portion of the NY-NJ-CT nonattainment area for the Serious classification. The EPA is also approving that this RACT certification submittal also satisfies New York's requirement for RACT for the 2015 8-hour Ozone NAAQS in the NYMA and the requirements for RACT for the 2015 8-hour Ozone NAAQS throughout the State of New York's commitment to meet RACT within the OTR.

The EPA is also approving portions of a comprehensive SIP revision submitted by New York on November 29, 2021, which includes: (1) The reasonable further progress plan and transportation conformity budgets for the 2008 8-hour Ozone Serious classification of the

NYMA; (2) an Ozone nonattainment new source review (NNSR) program which applies state-wide for emissions to NO<sub>x</sub> and VOC emissions from stationary sources; (3) a nonattainment emission inventory; and (4) clean fuels for fleets.

In addition, the EPA is also approving a portion of a comprehensive SIP revisions submitted by New York on November 13, 2017, which include New York's reasonable further progress plan and transportation conformity budgets for the 2008 8-hour Ozone Moderate classification of the NYMA.

## IV. 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, 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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.

In addition, this final rulemaking action, pertaining to New York's submissions, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The New York State Department of Environmental Conservation (NYSDEC) did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

### List of Subjects in 40 CFR Part 52

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

**Authority:** 42 U.S.C. 7401 *et seq.*  
**Lisa Garcia,**  
*Regional Administrator, Region 2.*

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart HH—New York**

■ 2. In § 52.1670(e), in the table, add entries for “2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2017; 2017 motor vehicle emission budgets used for planning purposes”, “2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2020; 2020 motor vehicle emission budgets used for planning purposes”, “2008 8-hour

Ozone Serious RACT Analysis and Certification”, “2015 8-hour Ozone RACT Analysis and Certification”, “2008 8-hour Ozone Serious Nonattainment New Source Review Requirements Certification”, “2008 8-hour Ozone Serious nonattainment emission inventory”, and “2008 8-hour Ozone Clean Fuel for Fleets” to the end of the table to read as follows:

**§ 52.1670 Identification of plan.**  
 \* \* \* \* \*  
 (e) \* \* \*

**EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2017; 2017 motor vehicle emission budgets used for planning purposes.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/13/2017	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval.
2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2020; 2020 motor vehicle emission budgets used for planning purposes.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval.
2008 8-hour Ozone Serious RACT Analysis and Certification.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	01/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval. • Certifies New York has met the RACT requirements as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, and to major sources of NO <sub>x</sub> for the Serious 2008 8-hour Ozone New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.
2015 8-hour Ozone RACT Analysis and Certification.	Statewide and to the New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	01/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval. • Certifies New York has met the RACT requirements as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, and to major sources of NO <sub>x</sub> for the Moderate 2015 8-hour Ozone New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area. • Certifies New York’s commitment to meet RACT statewide within the Ozone Transport Region (OTR) for the 2015 Ozone NAAQS.
2008 8-hour Ozone Serious Nonattainment New Source Review Requirements Certification.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval.
2008 8-hour Ozone Serious nonattainment emission inventory.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval.
2008 8-hour Ozone Clean Fuel for Fleets.	New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area.	11/29/2021	11/9/2023, [insert <b>Federal Register</b> citation].	• Full approval.

- 3. In §52.1683:
  - a. Remove the headings from paragraphs (f), (n), and (v); and
  - b. Add paragraph (w).
- The addition reads as follows:

**§ 52.1683 Control strategy: Ozone.**

\* \* \* \* \*

(w)(1) The January 29, 2021, New York Reasonably Available Control Technology (RACT) analysis plan, submitted pursuant to the 2008 8-hour ozone national ambient air quality standard (NAAQS) Serious classification, which applies to the New York portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) nonattainment area is approved as it continues to meet the RACT requirements for the two precursors for ground-level ozone, *i.e.*, oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 8-hour ozone standard.

(2) The January 29, 2021, New York Reasonably Available Control Technology (RACT) analysis plan, submitted pursuant to the 2015 8-hour ozone national ambient air quality standard (NAAQS) Serious classification, which applies to the entire State, including the New York portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) nonattainment area is approved as it applies to the Clean Air Act control technique guidelines (CTG) requirements for major sources of volatile organic compounds (VOC).

(3) The remainder of New York's January 29, 2021, RACT analysis plan, pursuant to the 2015 8-hour ozone NAAQS as applied to the entire State, including the New York portion of the NY-NJ-CT moderate nonattainment area, and as it applies to non-CTG major sources of VOCs and to major sources of oxides of nitrogen (NO<sub>x</sub>), is approved.

(4) The November 29, 2021, New York plan submittal providing a certification that the State has satisfied the requirements for an ozone nonattainment new source review program as sufficient for purposes of the State-wide 2008 8-hour ozone NAAQS Serious classification, including the New York portion of the NY-NJ-CT nonattainment area, is approved.

(5) The Reasonable Further Progress Plans for milestone years 2017 and 2020 pursuant to the 2008 8-hour Ozone NAAQS, included in New York's November 13, 2017, and November 29, 2021, State Implementation Plan submittals for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(6) The 2017 and 2020 motor vehicle emission budgets used for transportation conformity purposes for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area contained in New York's November 13, 2017, and November 29, 2021, SIP submittals are approved.

(7) New York's certification that the State has satisfied the requirements for Clean Fuel for Fleets under the Clean Air Act for the 2008 8-hour Ozone NAAQS, included in the State's November 29, 2021, SIP submittal for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area is approved.

[FR Doc. 2023-24616 Filed 11-8-23; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 411, 412, 419, 488, 489, and 495

[CMS-1785-CN2 and CMS-1788-CN2]

RINs 0938-AV08 and 0938-AV17

#### Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership; and Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated With Section 1115 Demonstrations in the Medicaid Fraction; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the August 28, 2023 **Federal Register** titled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability

Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership; and Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction" (referred to hereafter as the "FY 2024 IPPS/LTCH PPS final rule").

**DATES:**

*Effective date:* This correcting document is effective November 9, 2023.

*Applicability date:* This correcting document is applicable for discharges beginning October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Mady Hue, (410) 786-4510, and Andrea Hazeley, (410) 786-3543, MS-DRG Classifications.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

This correcting document identifies and corrects errors in FR Doc. 2023-16252 of August 28, 2023 (88 FR 58640). The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2023, as if they had been included in the document that appeared in the August 28, 2023 **Federal Register**.

#### II. Summary of Errors

On pages 58734 and 58735, we are correcting the omission of a comment and response with respect to the request for MS-DRG reassignment of cases reporting spinal fusion procedures utilizing an aprevo™ customized interbody fusion device.

#### III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply,