

**"New York State Implementation Plan for the 2008 and 2015 8-Hour Ozone NAAQS - Reasonably Available Control Technology"; "New York State Implementation Plan for the 2015 8-Hour Ozone NAAQS - Emissions Statement Requirement Certification"; Submission of Subpart 202-2 for Approval into New York State Implementation Plan**

Notice is hereby given that the New York State Department of Environmental Conservation (NYS DEC) plans to submit three State Implementation Plan (SIP) revisions to the United States Environmental Protection Agency (US EPA): Reasonably Available Control Technology (RACT) demonstrations for the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS); an emissions statement demonstration for the 2015 8-hour ozone NAAQS; and a repeal/replace of Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Subpart 202-2, "Emission Statements."

Pursuant to Clean Air Act Sections 182 and 184, New York State must submit RACT demonstrations for the 2008 and 2015 ozone NAAQS. The first proposed SIP revision consists of two RACT demonstrations: one that pertains to the New York metropolitan nonattainment area for the 2008 ozone NAAQS, which demonstrates that RACT continues to be fulfilled in the area following its reclassification to "serious" nonattainment; and one that pertains to the 2015 ozone NAAQS and demonstrates that RACT is fulfilled statewide.

NYS DEC concludes that the current application of RACT - comprised of a number of regulations covering various source categories, many of which have been updated within the last few years - satisfies the RACT requirements for the 2008 and 2015 8-hour ozone NAAQS with the exception of the Control Techniques Guidelines (CTGs) for the oil and natural gas industry. NYS DEC is committing via these RACT submissions to adopt the requirements of the oil and natural gas CTG in the future.

Pursuant to Clean Air Act Section 182(a)(3)(B), New York State must submit an emissions statement certification for the 2015 ozone NAAQS that confirms NYS DEC has an adequate program for the reporting of emissions from stationary sources throughout the state. NYS DEC fulfills this requirement with 6 NYCRR Subpart 202-2, "Emission Statements." In addition to the certification, NYS DEC plans to submit a SIP revision that will incorporate the 2010 version of 6 NYCRR Part 202 into the SIP.

NYS DEC is providing a 30 day period to comment on the proposed submissions or request a hearing. **Written comments should be submitted by 5:00 p.m. on November 13, 2020** to: Scott Wajda-Griffin, NYS DEC - Division of Environmental Remediation, 625 Broadway -11th Floor, Albany, NY 12233-3251, or by e-mail to: [dar.sips@dec.ny.gov](mailto:dar.sips@dec.ny.gov). Scott Wajda-Griffin can be reached at (518) 402-8396 with any questions regarding these proposed SIP revisions.

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Department of  
Environmental  
Conservation

# **NEW YORK STATE IMPLEMENTATION PLAN FOR THE 2008 AND 2015 8-HOUR OZONE NAAQS**

## **REASONABLY AVAILABLE CONTROL TECHNOLOGY**

October 2020

Proposed Draft Revision

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## Acronyms and Abbreviations

ACT	Alternative Control Techniques
AEL	Alternate Emission Limit
BACT	Best Available Control Technology
CAA	Clean Air Act
CTG	Control Techniques Guidelines
DEC	New York State Department of Environmental Conservation
EPA	United States Environmental Protection Agency
FSEL	Facility-Specific Emission Limit
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standards
NESHAPs	National Emission Standards for Hazardous Air Pollutants
NYCRR	New York Codes, Rules, and Regulations
NNSR	Nonattainment New Source Review
NO <sub>x</sub>	Oxides of Nitrogen
NYCRR	New York Codes, Rules, and Regulations
NYMA	New York metropolitan area
OTR	Ozone Transport Region
PPM	Parts per Million
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RACT	Reasonably Available Control Technology
SIP	State Implementation Plan
TPY	Tons per Year
VOC	Volatile Organic Compound

## Introduction

This revision to the New York State Implementation Plan (SIP) fulfills the requirements for Reasonably Available Control Technology (RACT) pursuant to the Clean Air Act (CAA). New York State is required to address RACT in its portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT serious nonattainment area (New York metropolitan area, or NYMA) under the 2008 ozone National Ambient Air Quality Standards (NAAQS), and statewide for the 2015 ozone NAAQS.

The New York State Department of Environmental Conservation (DEC) previously submitted SIP revisions to address RACT requirements for the 2008 ozone NAAQS statewide on December 22, 2014 and for the NYMA moderate nonattainment area on November 10, 2017.<sup>1,2</sup> The U.S. Environmental Protection Agency (EPA) approved these SIP revisions effective January 11, 2018 and June 12, 2020.<sup>3,4</sup>

The NYMA failed to meet its moderate attainment deadline of July 20, 2017, leading EPA to reclassify the NYMA to serious nonattainment for the 2008 ozone NAAQS effective September 23, 2019.<sup>5</sup> This reclassification calls for an additional demonstration that the NYMA meets the serious nonattainment RACT requirements. With this SIP revision, DEC certifies that New York's RACT program is sufficient for the NYMA serious nonattainment area for the 2008 ozone NAAQS.

On October 26, 2015, EPA published a revision to the NAAQS for ozone.<sup>6</sup> This action lowered the primary and secondary standards from 0.075 parts per million (ppm) to a level of 0.070 ppm averaged over an 8-hour period. Consequently, a revision to the SIP accounting for the proper application of RACT is required pursuant to CAA Section 172(c)(1). DEC hereby certifies that New York's RACT program is sufficient for the 2015 ozone NAAQS as demonstrated in this SIP revision.

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<sup>1</sup> <https://www.dec.ny.gov/chemical/100152.html>

<sup>2</sup> <https://www.dec.ny.gov/chemical/110733.html>

<sup>3</sup> "Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards," final rule. Published December 12, 2017; effective January 11, 2018. 82 FR 58342.

<sup>4</sup> "Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area," final rule. Published May 13, 2020; effective June 12, 2020. 85 FR 28490.

<sup>5</sup> "Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards," final rule. Published August 23, 2019; effective September 23, 2019. 84 FR 44238.

<sup>6</sup> "National Ambient Air Quality Standards for Ozone," final rule. Effective December 28, 2015. 80 FR 65292.

## General RACT Requirements

RACT is defined as the lowest emissions limit that a particular source is capable of meeting through the application of control technology that is reasonably available considering technological and economic feasibility. CAA Section 183 requires EPA to issue (and periodically update as needed) guidance that would help states meet RACT requirements. This includes the development of Control Techniques Guidelines (CTG) and Alternative Control Techniques (ACT) documents for controlling volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) from stationary sources. CTGs presumptively define a level of control as RACT. ACTs do not formally define RACT but instead describe available measures that are technologically and economically feasible which states can adopt to satisfy RACT.

EPA initially issued three sets of CTGs establishing a "presumptive norm" for RACT for several VOC source categories. The three sets of CTGs were: Group I (15 CTGs issued before January 1978); Group II (nine CTGs issued in 1978); and Group III (five CTGs issued in the early 1980s). An additional 18 CTGs were issued between December 1992 and September 2008. VOC ACTs were issued between 1983 and 1994, while NO<sub>x</sub> ACTs were issued between 1992 and 1995, along with September 2000 updates to the stationary internal combustion engine and cement kiln ACTs. In 2016 EPA issued a VOC CTG for the oil and natural gas industry.

CAA Sections 182(b)(2) and 182(f) require ozone nonattainment areas classified as moderate and above to adopt RACT for sources that are subject to CTGs, and for non-CTG major sources of VOCs and NO<sub>x</sub>. CAA Section 184 further requires states such as New York that are located in the Ozone Transport Region (OTR) to implement RACT with respect to all sources covered by CTGs.

RACT demonstrations must contain adopted RACT regulations, certifications (where appropriate) that existing provisions represent RACT, and/or negative declarations that there are no sources in the state covered by a specific CTG source category. Absent data indicating that the previous RACT demonstration is no longer appropriate, the state need not submit a new RACT requirement for these sources in its SIP. In such cases, the state should submit a certification as part of its SIP revision—with appropriate supporting information such as consideration of new data—that these sources are already subject to SIP-approved requirements that still meet the RACT obligation.

Consequently, a RACT determination is required for major stationary sources that meet a particular potential to emit (PTE) threshold depending on classification. The New York and Lower Orange County metropolitan areas have previously been classified as severe under the 1-hour ozone NAAQS and, due to the anti-backsliding provisions of the CAA, must continue to utilize the more stringent PTE thresholds of 25 tons per year (tpy) of NO<sub>x</sub> or VOC to satisfy RACT.

## **RACT SIP Determination for 2008 8-Hour Ozone NAAQS**

New York State had previously fully satisfied the statewide and moderate nonattainment area RACT requirements for the 2008 8-hour ozone NAAQS. EPA approved DEC's statewide 2008 NAAQS RACT SIP submission on December 12, 2017, contingent on the implementation of the industrial cleaning solvents CTG.<sup>7</sup> On May 13, 2020, EPA approved the NYMA-specific RACT SIP as well as DEC's promulgation of the industrial cleaning solvents CTG as the new Subpart 226-2.<sup>8</sup>

Upon failing to meet its moderate nonattainment deadline, the NYMA was reclassified to serious nonattainment. The only new RACT requirement for the serious nonattainment area is a reduction of the major source applicability threshold to 50 tpy for both NO<sub>x</sub> and VOC.<sup>9</sup> Because the NYMA retains the 25 tpy source applicability thresholds from its previous severe classification under the 1-hour standard, this requirement is already being fulfilled.

DEC has evaluated its existing RACT regulations and requirements and has determined that these measures continue to constitute RACT for the 2008 8-hour ozone NAAQS. New York's regulations stringently control major NO<sub>x</sub> and VOC sources and are consistent with the CTGs and ACTs that have been issued by EPA to date, with the exception of the oil and natural gas industry CTG. New York is developing a regulation to address the CTG and the state's commitment to reduce methane emissions under the methane reduction plan and the New York State Climate Leadership and Community Protection Act.<sup>10</sup>

## **RACT SIP Determination for 2015 8-Hour Ozone NAAQS**

The NYMA has been designated as moderate nonattainment for the 2015 ozone NAAQS. Additionally, since New York State is located within the OTR, the entire state is treated as "moderate" nonattainment for RACT purposes and must demonstrate that current state regulations fulfill 2015 ozone NAAQS RACT requirements for all applicable CTG categories and all major non-CTG sources. EPA finalized an implementation rule for the 2015 ozone NAAQS which was used as guidance in developing this RACT SIP.<sup>11</sup>

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<sup>7</sup> "Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards," final rule. Published December 12, 2017; effective January 11, 2018. 82 FR 58342-58347.

<sup>8</sup> "Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area," final rule. Published May 13, 2020; effective June 12, 2020. 85 FR 28490-28493.

<sup>9</sup> <https://www.epa.gov/ground-level-ozone-pollution/required-sip-elements-nonattainment-classification>

<sup>10</sup> Chapter 106 of the Laws of 2019 (July 18, 2019)

<sup>11</sup> "Implementation of the 2015 National Ambient Air Quality Standards for Ozone; Nonattainment Area State Implementation Plan Requirements," final rule. Published December 6, 2018; effective February 4, 2019. 83 FR 62998.

DEC has evaluated its existing RACT regulations and requirements and has determined that these measures constitute RACT for the 2015 8-hour ozone NAAQS. New York's regulations stringently control major VOC and NOx sources and are consistent with the CTGs and ACTs that have been issued by EPA to date, with the exception of the oil and natural gas industry CTG for which a regulation is being developed.

New York has actively been updating its regulations under Title 6 of the New York Codes, Rules, and Regulations (NYCRR) to further decrease ozone precursor emissions in the state, with the following RACT regulations having recently been updated:

- Part 205, "Architectural and Industrial Maintenance Coatings": Revised to establish more stringent VOC content limits that become effective January 1, 2021, including for the traffic marking coatings category that is subject to a CTG. The "quart exemption" was revised to exclude the floor coatings category and anti-bundling language was added to curb misuse.
- Subpart 219-10, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx) at Municipal and Private Solid Waste Incineration Units": New subpart 219-10 limits NOx emissions from municipal waste combustion units, with emission limits due in permit applications by June 30, 2021.
- Subpart 226-2, "Industrial Cleaning Solvents": New subpart 226-2 establishes VOC content limits for cleaning solvents used in operations not covered by other regulations, pursuant to EPA's September 2006 CTG. It applies to new facilities upon start-up and existing facilities generally by November 1, 2020.

DEC has also determined that RACT determinations made on a source-specific basis are consistent with the latest emission control technologies that apply cost thresholds – established in 1994 and continuously adjusted to account for inflation – to determine what constitutes technical and economic feasibility. A key component of New York's RACT program is its requirement for major and minor stationary sources with source-specific RACT determinations to periodically review the latest available control technologies and associated costs so as to ensure accurate and contemporary RACT conditions. New York's source-specific RACT determinations are further discussed on page 6.

Appendix A contains a complete list of current CTGs and ACTs, along with the New York State regulation that corresponds to each source category. Many of these regulations were updated during implementation of the 1997 8-hour ozone standard. The "state effective date" column refers to the last regulatory revision that affected the associated CTG. Many source categories have needed to be regulated beyond the minimum requirements of the CTG/ACT– for example, the recent Part 205 revision included a more stringent VOC content limit for traffic marking coatings. DEC has also reviewed the CTG/ACT categories for which a negative declaration had previously applied (see page 6).

## Identification of RACT Sources / Existing RACT Regulations

Appendix A lists the CTGs and ACTs and corresponding DEC RACT regulations that cover existing sources in New York State. For major non-CTG sources, RACT compliance is enforced through the provisions in 6 NYCRR Part 212, "Process Operations."

DEC is hereby certifying that all RACT regulations adopted to the present date are considered RACT for the 2015 8-hour ozone NAAQS as they reflect the most current pollution control technologies and economic considerations. Based on the review of current technologies, DEC has found no information indicating that the existing levels of control for these source categories are no longer RACT.

The RACT regulations being certified as current include the following:

### **NO<sub>x</sub> RACT Regulations**

- Subpart 212-3, "Reasonably Available Control Technology for Major Facilities"
- Subpart 212-4, "Control of Nitrogen Oxides for Hot Mix Asphalt Production Plants"<sup>12</sup>
- Part 214, "Byproduct Coke Oven Batteries"
- Part 216, "Iron and/or Steel Processes"
- Subpart 220-1, "Portland Cement Plants"
- Subpart 220-2, "Glass Plants"
- Subpart 227-2, "Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>)"

### **VOC RACT Regulations**

- Subpart 212-3, "Reasonably Available Control Technology for Major Facilities"
- Part 226, "Solvent Cleaning Processes and Industrial Cleaning Solvents"
- Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers"
- Part 229, "Petroleum and Volatile Organic Liquid Storage and Transfer"
- Part 230, "Gasoline Dispensing Sites and Transport Vehicles"<sup>13</sup>
- Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes"
- Part 234, "Graphic Arts"

New major facilities or modifications to existing major or minor sources in New York State are subject to the provisions of 6 NYCRR Part 231, "New Source Review for New and Modified Facilities." Since New York State is located entirely in the OTR, Nonattainment New Source Review (NNSR) applies statewide for ozone precursor

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<sup>12</sup> DEC is in the process of moving NO<sub>x</sub> requirements for hot mix asphalt production plants to new Subpart 220-3.

<sup>13</sup> DEC is in the process of revising this regulation to incorporate federal standards for gasoline dispensing facilities pursuant to 40 CFR Subpart CCCCCC. This regulatory update will be submitted to EPA as a SIP revision once the rulemaking process is complete.

pollutants (VOC and NO<sub>x</sub>) regardless of the area’s designation status, though pollutant thresholds are lower in the NYMA. NNSR requires the application of Lowest Achievable Emission Rate (LAER), which is more stringent than RACT. NO<sub>x</sub> sources are subject to a dual review under the Prevention of Significant Deterioration (PSD) and NNSR control programs because NO<sub>x</sub> is both a criteria pollutant and a precursor to ozone. PSD requires a review of Best Available Control Technology (BACT) which is also more stringent than RACT, though less stringent than LAER.

New York also relies upon federal rules such as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) regulated under CAA Section 112. NESHAPs control hazardous air pollutants through the application of Maximum Achievable Control Technology (MACT), which may be more stringent than RACT. These federal requirements are incorporated by reference into 6 NYCRR Part 200, “General Provisions.”

## Negative Declarations

Appendix A lists all the CTG and ACT documents that have been issued by EPA. For the 2008 ozone NAAQS RACT SIP submission, DEC staff reviewed its emissions inventory and emissions statements in order to confirm that the negative declarations previously approved by EPA remain valid. The following table presents the findings of DEC’s review of the previous negative declarations. These findings hold true for this 2015 NAAQS RACT submission, and are reflected in Appendix A.

CTG or ACT Category	Existing Sources?	Conclusion
Control of Volatile Organic Emissions from Manufacture of Vegetable Oils; EPA-450/2-78-035; June 1978 (Group II)	No	Negative Declaration Confirmed
Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; EPA-450/3-83-008; Nov. 1983 (Group III)	No	No sources identified, though CTG requirements covered by 6 NYCRR Part 236
Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants; EPA-450/3-83-007; Dec. 1983 (Group III)	No	Negative Declaration Confirmed
Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; EPA-450/3-84-015; Dec. 1984 (Group III)	No	Negative Declaration Confirmed
Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials; EPA-453/R-08-004; Sept. 2008	No	Negative Declaration Confirmed; EPA recognized in 79 FR 12082
Control of Volatile Organic Compound Emissions from the Application of Agricultural Pesticides; EPA-453/R-92-011; March 1993	No	Negative Declaration Confirmed; DEC does not have authority to regulate application of agricultural pesticides

## Source-Specific RACT Determinations

DEC submits certain source-specific RACT determinations to EPA as SIP revisions. In instances where a facility is unable to meet the relevant presumptive RACT limit due to technical or economic infeasibility, an alternate emission limit (AEL) – also called a

variance – is agreed to by DEC and the facility owner. Some regulations (e.g., Part 220, “Portland Cement Plants and Glass Plants”) do not define presumptive RACT limits due to the uniqueness of each facility; in these cases, each regulated facility performs a complete RACT analysis from which a facility-specific emission limit (FSEL) is established. A case-by-case RACT analysis may also be required for sources that are not in a source category covered by an existing state RACT regulation or addressed by a CTG.

DEC’s DAR-20 guidance, titled “Economic and Technical Analysis for Reasonably Available Control Technology (RACT),” provides procedures for the economic and technical feasibility analysis that needs to be used to evaluate source-specific RACT determinations and appropriate RACT emission limits. This guidance also notes that such determinations must be re-evaluated upon renewal of the emission source owner's permit. A re-evaluation must contain the latest control technologies and strategies available for review and take into account the inflation-adjusted economic threshold.

Under the CAA, individual source-specific RACT determinations that are included in a facility’s operating permit must be submitted to EPA as a revision to the New York SIP. Since there are many facilities in New York State that are subject to the various RACT regulations, DEC has periodically submitted “bundles” of source-specific RACT determinations to EPA. This includes 34 RACT determinations submitted on September 16, 2008 and 14 RACT determinations submitted on August 30, 2010 that are regulated under various RACT rules, as well as a bundle of six RACT determinations submitted on December 18, 2013 for Portland cement plants and glass plants regulated under Part 220.

In 2019, EPA began addressing New York’s backlogged SIPs and has been working collaboratively with DEC to determine the current status of New York’s backlogged single-source RACT determinations.<sup>14</sup> On May 7, 2020, DEC withdrew 18 previously submitted RACT determinations because the facilities are no longer in operation or no longer need SIP approval. The status of remaining backlogged SIPs will be addressed by DEC in the future. It is important to note that DEC periodically monitors the AELs and FSELs issued in its Air State Facility and Title V permits for source-specific RACT determinations and will continue to submit them to EPA as needed.

Appendix B includes a list of single-source RACT determinations that have been submitted to EPA; Appendix C contains correspondence from EPA dated May 21, 2020 regarding the latest developments in addressing the single-source SIP backlog.

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<sup>14</sup> September 19, 2019 letter from John Filippelli, Director, EPA Region 2 Air & Radiation Division, to Steven Flint, Director, DEC Division of Air Resources.

## Conclusion

Based on a review of existing RACT regulations in New York State, DEC finds that the RACT requirements pursuant to the 2008 and 2015 8-hour ozone NAAQS have been fulfilled. DEC's evaluation has determined that all CTG sources, major non-CTG sources, and sources subject to source-specific RACT under its jurisdiction are currently controlled by RACT or better standards, with the exception of the oil and natural gas industry CTG. That CTG is being addressed through a regulatory revision and will be submitted to EPA upon completion to fulfill the RACT requirements for the 2008 NAAQS serious nonattainment area and for the 2015 NAAQS. These RACT determinations are consistent with the most recent emissions control technology and economic considerations.

## **Appendix A:**

### **Control Techniques Guidelines and Alternative Control Techniques Documents**

## **Appendix B:**

### **List of Submitted Source-Specific RACT Determinations**

## **Appendix C:**

**May 21, 2020 Correspondence from Peter Lopez, EPA Region 2  
Administrator, Regarding Backlogged Single-Source SIP Revisions**

**Appendix D:**

**EPA-Approved New York State Regulations and Laws  
(40 CFR Part 52.1670(c)) as of September 15, 2020**



Department of  
Environmental  
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**NEW YORK STATE  
IMPLEMENTATION PLAN FOR THE  
2015 8-HOUR OZONE NAAQS  
EMISSIONS STATEMENT  
REQUIREMENT CERTIFICATION**

October 2020

Proposed Draft Revision

**DIVISION OF AIR RESOURCES**  
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## Introduction

The New York State Department of Environmental Conservation is submitting this proposed revision to its State Implementation Plan (SIP) to fulfill an emissions statement requirement pursuant to Clean Air Act (CAA) section 182(a)(3)(B). In 2015 the U.S. Environmental Protection Agency (EPA) revised the 8-hour ozone National Ambient Air Quality Standards (NAAQS) to a level of 0.070 parts per million (ppm). This revision to the NAAQS prompted some areas to be designated as nonattainment of the new standards and thus required to fulfill certain nonattainment requirements. Among the areas designated nonattainment was the New York-Northern New Jersey-Long Island, NY-NJ-CT area (New York metropolitan area, or NYMA). This area, classified as moderate nonattainment, consists of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties. The remainder of New York State is designated attainment for the 2015 NAAQS.

## Statutory Requirements

CAA section 182(a)(3)(B) requires the following regarding emissions statements for areas designated as marginal nonattainment:<sup>1</sup>

*(i) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.*

*(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs 1 (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.*

Furthermore, CAA section 182(b) requires moderate nonattainment areas to fulfill all requirements placed on marginal nonattainment areas under section 182(a).

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<sup>1</sup> This particular requirement applies to marginal nonattainment areas, but CAA S.182(b) expands the applicability to moderate nonattainment areas as well.

## Certification

New York's emissions statement requirements are contained in 6 NYCRR Subpart 202-2, "Emission Statements." Subpart 202-2 was originally adopted on July 13, 2004, with revisions becoming effective May 29, 2005 and September 30, 2010. The 2005 revision was approved by EPA into the New York SIP on October 31, 2007.<sup>2</sup>

The most recent version of subpart 202-2 (as revised in 2010) is being submitted to EPA for approval into the SIP concurrently with this proposed emissions statement SIP. It is included as Appendix A. It details the following requirements, which are applicable statewide:

- Source applicability;
- Required contents of emissions statements;
- Procedures for developing and submitting emissions statements; and,
- Recordkeeping requirements

EPA has proposed its finding that subpart 202-2 satisfies New York's emissions statement requirement pursuant to the 2008 ozone NAAQS.<sup>3</sup> DEC hereby certifies that 6 NYCRR subpart 202-2 continues to fully address the emissions statement requirements of CAA section 182(a)(3)(b) and 182(b) for the 2015 ozone NAAQS.

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<sup>2</sup> "Approval and Promulgation of Implementation Plans; New York Emission Statement Program." Published October 31, 2007; effective November 30, 2007. 72 FR 61530.

<sup>3</sup> "Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area." Published February 13, 2020. 85 FR 8233.

## **APPENDIX A**

**6 NYCRR Subpart 202-2, "Emission Statements"  
Revised September 30, 2010**