

**SUMMARY:** The Corps of Engineers is proposing regulations to establish a Danger Zone at Glenn L. Martin State Airport in the waters of Frog Mortar Creek located in Middle River, Maryland. These regulations will enable the Maryland Air National Guard (MdANG) to ensure the safety of watermen and mariners in the vicinity of an existing munitions depot located at Glenn L. Martin State Airport adjacent to Frog Mortar Creek. The regulations are necessary to protect the watermen and mariners from potentially hazardous conditions which may exist as a result of MdANG's use of the area.

**DATES:** Written comments must be submitted on or before September 12, 2001.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Steve Elinsky, Corps of Engineers, Baltimore District, Regulatory Branch, at (410) 962-4503.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in § 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.145 which establishes a danger zone in Frog Mortar Creek adjacent to Glenn L. Martin State Airport in Middle River, Maryland. The public currently has unrestricted access to the waters of Frog Mortar Creek in close proximity to MdANG's munitions depot. To better protect watermen and mariners, the MdANG has requested the Corps of Engineers establish a Danger Zone that will enable the MdANG to implement a zone of safety that is currently not available at the facility.

#### Procedural Requirements

##### *a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### *b. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial

number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

##### *c. Review Under the National Environmental Policy Act*

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional danger zone regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, see paragraph 4 of this notice.

##### *d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

#### List of Subjects in 33 CFR Part 334

Danger Zones, Marine Safety, Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR 334, as follows:

#### **PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR 334 continues to read as follows:

**Authority:** 40 Stat. 266 (30 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.145 is added to read as follows:

**§ 334.145 Frog Mortar Creek, west side, adjacent to Maryland Air National Guard munitions depot located at Glenn L. Martin State Airport, Middle River, Maryland; Danger Zone.**

(a) *The area.* (1) The waters within an area beginning at a point on the shore at latitude 39°19'35.8" N, longitude 76°24'28.7" W; thence northeasterly to latitude 39°19'36.8" N, longitude 76°24'26" W; thence northwesterly to latitude 39°19'40.7" N, longitude

76°24'29.6" W; thence southwesterly to latitude 39°19'40.2" N, longitude 76°24'31.5" W; thence southeasterly along the shoreline to the point of beginning.

(b) *The regulation.* (1) All vessels entering the danger zone shall proceed across the area by the most direct route and without unnecessary delay.

(2) No vessel or craft of any size shall lie-to or anchor in the danger zone at any time other than a vessel operated by or for the U.S. Coast Guard, local, State, or Federal law enforcement agencies.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, Maryland Air National Guard, and/or persons or agencies as he/she may designate.

Dated: July 30, 2001.

**Charles M. Hess,**

Chief, Operations Division Directorate of Civil Works.

[FR Doc. 01-20232 Filed 8-10-01; 8:45 am]

BILLING CODE 3710-92-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[Region 2 Docket No. NY49-223, FRL-7032-3]

#### **Approval and Promulgation of Implementation Plans; New York Reasonable Further Progress Plans and Transportation Conformity Budgets for 2002, 2005 and 2007**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to approve a New York State Implementation Plan revision involving the 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements, including the separate requirement for enforceable commitments for the 1-hour ozone attainment demonstration. Specifically, EPA is proposing approval of the: 2002, 2005 and 2007 ozone projection emission inventories; Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007; transportation conformity budgets for 2002, 2005 and 2007; and contingency measures. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone.

**DATES:** Comments must be received on or before September 12, 2001.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the New York submittals and EPA's Technical Support Document (TSD) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd floor, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

#### **SUPPLEMENTARY INFORMATION:**

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##### **What Are the Clean Air Act Requirements and How Do They Apply to New York?**

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas designated nonattainment for the 1-hour ozone standard as well as timeframes for when these submissions and requirements are to be submitted to EPA by the states. EPA has issued the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) describing in detail

EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale.

New York has six ozone nonattainment areas. These areas are the Albany-Schenectady-Troy Area, Buffalo-Niagara Falls Area, Essex County Area, Jefferson County Area, Poughkeepsie Area and the New York-Northern New Jersey-Long Island Area. The Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County and the Poughkeepsie Areas are considered "clean data" areas which essentially means that the three most recent years of air monitoring data demonstrate attainment of the 1-hour ozone standard. As for the New York-Northern New Jersey-Long Island Area, which is classified as a severe ozone nonattainment area, the most recent three years of data continue to demonstrate nonattainment. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland, and seven municipalities in Orange County-Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury. The focus of this **Federal Register** action is the New York portion of the New York-Northern New Jersey-Long Island Area (referred to as the New York Metro Area).

##### **What Was Included in New York's Submittal?**

On November 27, 1998, Deputy Commissioner Carl Johnson of the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a revision to the SIP to meet requirements related to attainment of the National Ambient Air Quality Standards (NAAQS) for ozone. This revision is intended to fulfill the requirement in the Act for 3 percent per annum Reasonable Further Progress (RFP) including contingency measures, and includes the following: the 2002, 2005 and 2007 ozone projection emission inventories; RFP Plan for milestone years 2002, 2005 and 2007; contingency measures and transportation conformity budgets for 2002, 2005 and 2007.

##### **How Were New York's 2002, 2005 and 2007 Ozone Projection Emission Inventories Developed and What Were the Results?**

A projection of 1990 volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) anthropogenic emissions to 2002, 2005 and 2007 in the New York Metro Area is required to determine the reductions needed for the RFP plans with NO<sub>x</sub> substitution. The 2002, 2005 and 2007 projection year emission inventories are calculated by multiplying the 1990 base year inventory by factors which estimate growth from 1990 to 2002, 2005 and 2007, respectively. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

The difference between the 1990 base year inventory and the 2002, 2005 and 2007 projection inventories are the emissions growth estimates. Based on the difference between the 1990 base year inventory and the 2002, 2005 and 2007 projection year inventories, the total 1990 to 2002, 2005 and 2007 growth, for the four anthropogenic VOC source categories (stationary point, area, non-road and on-road mobile), is estimated at 121.8, 160.6 and 186.6 tons per day (tpd), respectively, in the New York Metro Area. The total growth, for all the NO<sub>x</sub> source categories, from 1990 to 2002, 2005 and 2007 growth is estimated at 226, 276.2 and 307.9 tpd, respectively, in the New York Metro Area.

##### *1990 Base Year Inventory*

On May 10, 2001 (66 FR 23849) EPA approved the 1990 base year inventory (for all ozone nonattainment areas in New York State). Based on EPA's review, New York satisfied all of EPA's requirements for purposes of providing a comprehensive and accurate 1990 inventory of actual emissions in the ozone nonattainment areas. Details of EPA's evaluation of the 1990 Base year inventory will not be discussed in this rulemaking. The reader is referred to EPA's November 3, 1999 (64 FR 59706) proposed approval and "New York State 1990 Base Year Inventory SIP Technical Support Document," for details on the approval of New York's 1990 base year ozone season emission inventory. Table 1 below shows the federally-approved 1990 base year VOC and NO<sub>x</sub> emission inventories for the New York Metro Area.

TABLE 1.—NEW YORK METRO AREA 1990 BASE YEAR EMISSIONS INVENTORY OZONE SEASON EMISSIONS (TPD)

Pollutant	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC .....	381	103	484	167	103	1,238
NO <sub>x</sub> .....	59	286	400	178	N/A	923

*2002, 2005, 2007 Projection Year Inventory Methodology Major Point Sources*

For the major point source category, New York projected 1990 base year emissions to 2002, 2005 and 2007 for each facility using Bureau of Economic Analysis (BEA) growth indicators available from New York State at the two-digit Standard Industrial Classification (SIC) Code level. BEA growth indicators are one of the preferred growth indicators to use, as outlined in "Procedures for Preparing Emissions Projections," July 1991.

*Area Sources*

For the area source category, New York projected emissions from 1990 to 2002, 2005 and 2007 using population and BEA growth rates where applicable. This is in accordance with EPA's recommended growth indicators for

projecting emissions for area source categories outlined in "Procedures for Preparing Emissions Projections," July 1991.

*Non-Road Mobile Sources*

Non-road vehicle equipment emissions were projected from 1990 to 2002, 2005 and 2007 using population growth forecast or BEA industrial indicators where applicable. This is in accordance with EPA's recommended growth indicators for projecting emissions for non-road mobile source categories outlined in "Procedures for Preparing Emissions Projections," July 1991.

*Highway Mobile Sources*

For the on-road mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are vehicle

miles traveled (VMT) and EPA's mobile emissions model Mobile 5b. 2002, 2005 and 2007 VOC and NO<sub>x</sub> emission factors were generated by Mobile 5b and applied to the New York State Department of Transportation (NYSDOT) VMT projections.

NYSDOT projected VMT by county and functional roadway classification based upon linear regression of historical Highway Performance Monitoring System (HPMS) VMT data. This is in accordance with EPA's recommended growth indicators for projecting emissions for on-road mobile source categories outlined in "Procedures for Preparing Emissions Projections," July 1991.

Table 2 shows 2002, 2005 and 2007 VOC and NO<sub>x</sub> projection emission inventories (controlled after 1990) using the aforementioned growth indicators/methodologies.

TABLE 2.—NEW YORK METRO AREA 2002, 2005 AND 2007 PROJECTION YEAR INVENTORIES (CONTROLLED) OZONE SEASON VOC AND NO<sub>x</sub> EMISSIONS (TPD)

Pollutant	Point sources	Area sources	Non-Road mobile sources	On-road mobile sources	Total
2002:					
VOC .....	85.2	352.1	142	179.1	758.4
NO <sub>x</sub> .....	180.8	63.5	173.9	265.9	684.1
2005:					
VOC .....	87	356.8	127	166.9	737.7
NO <sub>x</sub> .....	147.9	64.7	166.3	253.8	632.7
2007:					
VOC .....	87.5	357.9	115	162.4	722.8
NO <sub>x</sub> .....	148.3	65.4	161.3	244	619

Based on EPA guidance, the 2002, 2005 and 2007 inventories are complete and approvable. A more detailed discussion of how the emission inventories were reviewed and the results are presented in the supporting Technical Support Document (TSD).

**What are the Clean Air Act Requirements for an Approvable Reasonable Further Progress Plan?**

Section 182(c)(2)(B) of the Act requires ozone nonattainment areas with classifications of serious and above to develop plans to reduce area-wide VOC emissions by 3 percent per year averaged over each consecutive three-year period beginning 6 years after

enactment of the Act (1996) until the area attains the 1-hour ozone standard (2007 for the New York Metro Severe Ozone nonattainment area). EPA previously approved the 15 and 9 percent Rate of Progress (ROP) Plans for the New York Metro Area (66 FR 23849). Those plans identify the control measures and the VOC and NO<sub>x</sub> emission reduction credits associated with those measures that would be achieved from 1990 through 1999. This notice refers to the New York Metro Area RFP plans for milestone years 2002, 2005 and 2007.

Section 182(c)(2)(C) of the Act allows NO<sub>x</sub> reductions to be substituted for VOC reductions for RFP demonstrations

in accordance with EPA guidance. New York has shown that NO<sub>x</sub> reductions may appropriately be counted toward the RFP requirements. A full explanation of how New York's SIP fulfills EPA's guidance concerning NO<sub>x</sub> substitution is included in the TSD.

**What Measures are Being Implemented in New York To Achieve RFP?**

New York provided a plan which commits to implement a list of measures to achieve the RFP reductions required for the New York Metro Area. Table 3 identifies the reductions associated with each individual control strategy which occurs between 1990–2007. Some of those credits were utilized in the

federally approved 15 and 9 percent ROP plans for the New York Metro Area, however, due to the nature of the control measures/programs these measures achieve additional emission reduction credits beyond those used in the 15 and 9 percent ROP plans. These unused reductions are being claimed in these recent RFP plans. For a concise

description of those control measures and emission reduction credits used in the 15 and 9 percent plans, the reader is referred to EPA's proposed rulemaking action on the New York 15 and 9 percent ROP plans, published in the **Federal Register** on November 3, 1999 (64 FR 59706). All of the measures identified in table 3 have either been

adopted by New York and submitted to EPA as SIP revisions or are promulgated federal measures. Following table 3 is a concise description of those new measures that were not previously included in New York's 15 and 9 percent plans.

TABLE 3.—SUMMARY OF RFP CONTROL MEASURES AND EMISSION REDUCTION CREDITS (TPD)

Control measures	VOC	NO <sub>x</sub>
Non-road mobile source:		
Reformulated Gasoline (Phases I & II) .....	9.0	
New Engine Standards .....	60.0	40.0
On-road mobile source:		
Reformulated Gasoline (Phases I & II) .....	167.2	22.9
Tier I—New Vehicle Standards .....	59.5	87.1
Low Emission Vehicle .....	24.2	24.3
Enhanced Inspection and Maintenance .....	77.6	58.2
2004 NO <sub>x</sub> Emission Standards .....	—	15.0
Stationary source control measures:		
Parts 212, 228, 229—VOC Reasonably Available Control Technology (RACT) .....	21.6	—
MACT (Federal Air Toxics Measures) .....	7.9	—
Ozone Transport Commission (OTC) Phase II Baseline (Part 227–3 and Part 204) .....	—	194.4
Part 227–2 .....	—	7.5
40 CFR Subpart Cb (Large Municipal Waste Combustors) .....	—	2.5
Capped .....	2.7	3.3
Area source control measures:		
Auto Body Refinishing .....	5.8	—
Commercial Bakeries .....	2.1	—
Consumer Products .....	12.5	—
Graphic Art Facilities .....	0.8	—
Hospital Sterilizers .....	0.1	—
Municipal Solid Waste Landfills .....	5.1	—
Stage II gasoline vapor recovery .....	2.1	—
Transit/Loading Losses .....	0.7	—
Surface Cleaning .....	19.4	—
Total emission reduction credits .....	478.3	455.2

New Control Measures not included in New York's 15 and 9 percent ROP plans: Reformulated Gasoline Phase II—On-Road; 2004 NO<sub>x</sub> Emission Standard; Reformulated Gasoline Phase II—Non-Road; OTC Phase II Baseline (Part 227–3)—NO<sub>x</sub> MOU; NO<sub>x</sub> SIP Call (Part 204); Capped/shutdown emissions.

#### *Reformulated Gasoline Phase II—On-Road*

The second phase of the federal reformulated gasoline program (RFG Phase 2) began on January 1, 2000 in New York's portion of the New York Metro Area. RFG Phase 2 reduces emissions further than the first phase of the program, requiring minimum ozone season VOC reductions of 27 percent from average 1990 gasoline levels. The second phase of the program also requires that refiners reduce NO<sub>x</sub> levels by a minimum of 7 percent from average 1990 levels. New York has accounted for the emissions reduction effects of RFG Phase 2 in its most recent ROP plans.

#### *2004 NO<sub>x</sub> Emission Standard*

EPA finalized new engine emission standards which will require reduced emissions of NO<sub>x</sub> beginning with model year 2004. To model the effects of the

new heavy duty engine standards, EPA released MOBILE5 Information Sheet #5, "Inclusion of New 2004 NO<sub>x</sub> Standard for Heavy-Duty Diesel Engines in MOBILE5a and MOBILE5b Modeling," January 30, 1998. New York has accounted for the effects of the new standard in its modeling based on this EPA guidance.

#### *Reformulated Gasoline Phase II—Non-Road*

New York based its assumptions regarding expected emissions reductions from use of RFG Phase 2 in nonroad vehicles and engines on expected gasoline Reid vapor pressure (RVP) reductions associated with this gasoline and theoretical vapor-liquid relationships. New York verified its predictions using EPA's draft NONROAD computer model. EPA has determined that New York's methods for predicting emissions benefits from this source category are approvable.

However, once EPA's NONROAD model becomes final, New York will be expected to reexamine and consider recalculation of the emission reductions, if at that time, there is reason to believe that results predicted by the final NONROAD model will vary significantly from those predicted by the draft model. This is because EPA guidance recommends against use of draft models for SIP purposes.

#### *OTC Phase II Baseline (Part 227–3)—NO<sub>x</sub> MOU*

On January 12, 1999, New York adopted revisions to Part 227–3 "Pre 2003 Nitrogen Oxides Emissions Budget and Allocation Program," which incorporate the NO<sub>x</sub> Memoranda of Understanding (MOU) requirements. The Ozone Transport Commission (OTC) NO<sub>x</sub> MOU calls for states to reduce NO<sub>x</sub> emissions from boilers and indirect heat exchangers with heat inputs greater than 250 million British

Thermal Unit (Btu) per hour. These emission reductions will be realized in two phases, first in 1999 and again in 2003. Part 227–3 became effective on March 5, 1999 and sources are required to be in compliance with the first phase by May 1, 1999. On April 29, 1999, NYSDEC submitted to EPA a SIP revision which included the revisions to Part 227–3. On April 19, 2000, 65 FR 20905, EPA approved the revisions to Part 227–3.

#### *NO<sub>x</sub> SIP Call (Part 204)*

On October 27, 1998, EPA published a final rule entitled, “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,” otherwise known as the “NO<sub>x</sub> SIP Call.” See 63 FR 57356. At that time, the NO<sub>x</sub> SIP Call required 22 states and the District of Columbia<sup>1</sup> to meet statewide NO<sub>x</sub> emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO<sub>x</sub> SIP Call set out a schedule that required the affected states, including New York, to adopt regulations by September 30, 1999, and to implement control strategies by May 1, 2003<sup>2</sup>.

The NO<sub>x</sub> SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. However, the SIP Call notice suggested that imposing statewide NO<sub>x</sub> emissions caps on large

fossil-fuel fired industrial boilers and electricity generators would provide a highly cost-effective means for states to meet their NO<sub>x</sub> budgets.

On November 15, 1999, New York adopted Part 204, “NO<sub>x</sub> Budget Trading Program,” in order to strengthen its one-hour ozone SIP and to comply with the NO<sub>x</sub> SIP Call during each ozone season, i.e., May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28059) EPA approved New York’s regulations to comply with the NO<sub>x</sub> SIP Call.

#### *Capped/Shutdown Emissions*

Certain facilities chose permit limits on their hours of operation to “cap” their facilities potential emissions below an annual level which reflected their actual hours of operation and emissions. These “capping out” provisions are included in a number of New York VOC and NO<sub>x</sub> RACT regulations. The “capping out” provision exempts the facility from RACT requirements and/or Title V permitting requirements. In the projection inventory, New York adjusted emissions to account for those facilities that have “capped out.” In addition, New York adjusted emissions to account for those facilities that have ceased or shutdown operations since the 1990 base year emissions inventory was compiled.

#### **What is EPA’s Assessment of New York’s Control Measures and the Emission Reductions Credits?**

New York has identified the control measures necessary for achieving the required emission reductions and all the measures have been adopted and implemented. EPA is proposing to find that the 2002, 2005 and 2007 RFP Plans contain the necessary measures as identified in Table 3 to achieve the required emission reductions. Therefore, EPA proposes to approve the emission reduction credits associated with the control measures identified in New York’s 2002, 2005 and 2007 RFP plans.

#### **Does New York Achieve the RFP Target Level of Emissions for Milestone Years 2002, 2005 and 2007?**

New York identified the control measures necessary for achieving the

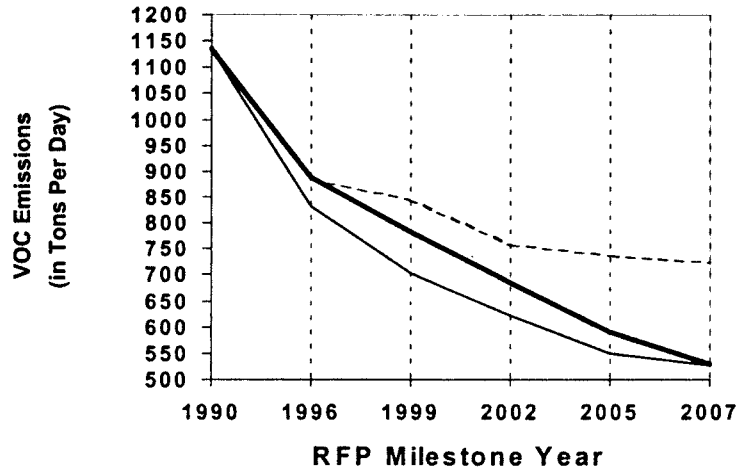
required emission reductions and all the measures have been adopted and are implemented or scheduled to be implemented. New York’s November 27, 1998 submittal included a cumulative summary of the VOC and NO<sub>x</sub> emission reduction credits associated with the control measures identified in Table 3, i.e., credits between 1990–2002, 1990–2005 and 1990–2007. To verify whether the emission reduction credits identified in New York’s plan meet the 3 percent per year RFP requirement for milestone years 2002, 2005 and 2007, EPA recalculated New York’s emission reduction credits such that the emission reduction credits represent the incremental credits achieved between each milestone year, i.e., 1999–2002, 2002–2005 and 2005–2007. Detailed tables are contained in the TSD which include among other data, columns showing the target level VOC and NO<sub>x</sub> emissions and the total emission reduction credits for the source categories for each milestone year. Based on EPA’s calculation of the incremental emission reduction credits associated with New York’s submittal, EPA has determined that New York has achieved the RFP required reductions for milestone years 2002, 2005 and 2007.

Figure 1 depicts the required 2002, 2005 and 2007 RFP VOC target level emissions, the estimated VOC emissions based solely on implementing all of the VOC control strategies and the estimated VOC equivalent emissions with NO<sub>x</sub> substitution based on implementing all of the control strategies identified in table 3. The RFP target levels for milestone years 2002, 2005 and 2007 are 684.07 tpd, 589.86 tpd and 528.32 tpd, respectively. The projected controlled level of emissions in milestone years 2002, 2005 and 2007 are 622.65 tpd, 548.83 tpd and 526.9 tpd, respectively. As can be seen from Figure 1, the VOC equivalent emissions (with substituting NO<sub>x</sub> for VOC) fall below the RFP target levels, therefore, New York has demonstrated that the RFP requirements have been met.

<sup>1</sup> Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

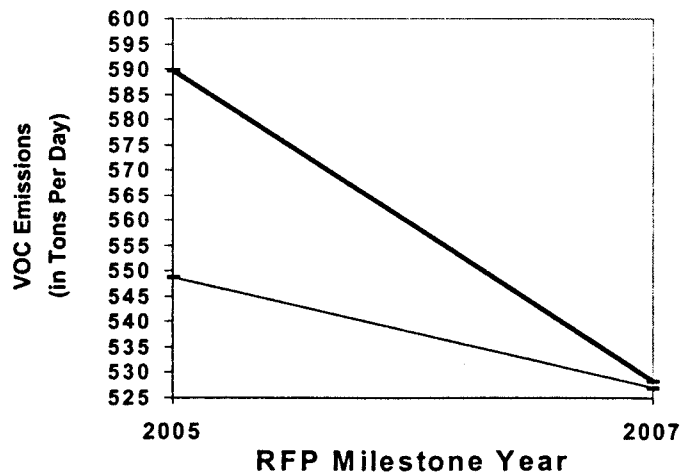
<sup>2</sup> On May 25, 1999, the D.C. Circuit issued a stay of the submission requirement of the SIP Call pending further order of the court. *Michigan v. EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part). On April 3rd and 18th, 2000, New York voluntarily submitted this revision to EPA for approval notwithstanding the court’s stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on *Michigan v. EPA*, affirming most aspects of the SIP Call and remanding limited portions to the Agency. On June 22, 2000, the D.C. Circuit lifted the stay of the SIP submission obligations and provided states until October 30, 2000.

**Figure 1: Comparison of 2002, 2005 & 2007  
VOC RFP Projection Year Emissions  
for the New York Metro Area**



----- VOC Actual    — VOC Target    — VOC Using NOx Surplus

**Magnified View of Figure 1  
2005 through 2007**



— VOC Target    — VOC Using NOx Surplus

EPA is proposing to find that New York's RFP Plans contain the necessary measures as identified in Table 3 to achieve the required emission reductions.

### **How Did New York Provide for the Contingency Measure Requirement?**

#### *Contingency Measures*

In addition to the 2002, 2005 and 2007 RFP Plans, the New York submittal also addresses contingency measures required under the Act. Section 172(c)(9) of the Act requires states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve RFP or to attain the NAAQS within the timeframes specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the state or by the EPA Administrator upon failure by the state to: meet RFP emission reduction milestones; attainment of the NAAQS by the required deadline; or other applicable milestones of the Act. EPA's policy, as provided in the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for 3 percent reduction of adjusted 1990 baseline emissions beyond the reduction required for a particular milestone year. While all contingency measures must be fully adopted rules or measures, states can use the measures in two different ways. A state can choose to implement contingency measures before the milestone deadline. Alternatively, a state may decide not to implement a contingency measure until an area has actually failed to achieve a RFP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure. The General Preamble indicates that the 3 percent reduction "buffer" must be maintained through each RFP milestone. Therefore, New York must

demonstrate that the New York Metro Area has enough contingency measure reductions in addition to the reductions claimed for the 2002, 2005 and 2007 RFP Plans. Because of this requirement, New York's 2002, 2005 and 2007 RFP Plans identify, for contingency purposes, a 3 percent emission reduction beyond the reduction required for RFP.

Consistent with guidance provided in the General Preamble, New York determined the needed contingency measure reduction by multiplying 3 percent of the 1990 adjusted base year emissions. Based on this calculation, the needed contingency measure reduction for the New York Metro Area is 34 TPD of VOC.

Consistent with the December 29, 1997 EPA memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation "Guidance for the Implementing the 1-hour Ozone and the Pre-existing PM<sub>10</sub> NAAQS," states may take credit for NO<sub>x</sub> emissions reductions obtained from sources outside the designated nonattainment area for the post-1999 RFP requirement. New York substituted creditable NO<sub>x</sub> reductions from outside the New York Metro Area, specifically from the Roseton Generating Station located in Newburgh (Northern Orange County, NY). This facility is affected by Subpart 227-3, NO<sub>x</sub> Budget program and will provide creditable NO<sub>x</sub> emission reductions for the contingency requirement. These emission reductions will be realized in two phases, first in 1999 and again in 2003. Part 227-3 became effective on March 5, 1999 and sources are required to be in compliance with the first phase by May 1, 1999. On April 19, 2000, 65 FR 20905, EPA approved the revisions to Part 227-3. New York's use of these reductions is consistent with the criteria outlined in EPA's guidance. EPA believes that this additional flexibility for states in their RFP SIP's is consistent with the Act, since reductions from outside a nonattainment area within certain limits contribute to progress toward attainment within the area.

The New York RFP Plans achieve an additional 34 tpd reduction in VOC equivalent emissions with NO<sub>x</sub> substitution beyond the 3 percent per year RFP ozone precursor reduction, through creditable control measures. For this reason, the contingency measure portion of the 2002, 2005 and 2007 RFP Plans satisfy the contingency measure requirements of the Act. Therefore, EPA proposes to approve the contingency measure portion of the plan.

### **Are New York's RFP Reductions Consistent With EPA's Proposal of the 1-Hour Ozone Attainment Demonstration?**

On December 16, 1999 (64 FR 70364), EPA proposed that in order for New York to attain the 1-hour ozone standard, additional emission reductions beyond those contained in the RFP plan and attainment demonstration submitted by New York were needed. In that same rulemaking, EPA also proposed approval of the New York 1-hour ozone attainment demonstration SIP provided New York submits various enforceable commitments. On April 18, 2000 New York submitted to EPA the necessary enforceable commitments including a commitment to participate in the development of regional measures through the OTC process and to adopt these measures by October 31, 2001. New York has been an active participant in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard in the New York Metro Area. EPA proposes to find that with the inclusion of the enforceable commitments as submitted by New York on April 18, 2000, New York has met the conditions for an approvable attainment demonstration and RFP Plan. EPA proposes to approve the enforceable commitments.

### **Are New York's Transportation Conformity Budgets Approvable?**

By virtue of proposing approval of the 2002, 2005 and 2007 RFP Plan, EPA is also proposing approval of the motor vehicle conformity emissions budgets for VOC and NO<sub>x</sub>. On November 16, 1999 (64 FR 62194) EPA found the 2002 and 2005 budgets adequate for conformity purposes. These budgets are consistent with the measures in New York's RFP plan. On April 18, 2000, New York revised the 2007 budgets to reflect the 1-hour ozone attainment demonstration for the New York Metro Area and committed to revise its motor vehicle emissions budget within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. On June 9, 2000 (65 FR 36690), EPA found the 2007 budget to be adequate for conformity purposes. Since New York has committed to revise the 2007 emissions budget that EPA is proposing to approve, EPA wants its approval of the 2007 emissions budget to last only until an adequate revised budget is submitted pursuant to the commitment. EPA believes the revised 2007 budget

should apply as soon as it is found adequate. EPA does not believe it is necessary to wait until it has been approved as a revision to the respective plan. This is because EPA recognizes

that the revised budget will be based on a more advanced technical understanding of motor vehicle emissions and control programs. Accordingly, once the revised budget is

found adequate, it will be more appropriate to use for conformity purposes than the originally approved budget.

TABLE 4.—EMISSION BUDGETS FOR CONFORMITY (TPD)

County	2002		2005		2007	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Bronx .....	11	17	10	16	9	12
Kings .....	17	22	16	21	15	17
Nassau .....	38	50	36	48	36	44
New York .....	15	15	13	14	12	11
Orange (LOCMA) .....	4	8	4	8	3	6
Queens .....	23	31	21	29	19	23
Richmond .....	7	10	6	10	7	9
Rockland .....	9	15	8	15	7	11
Suffolk .....	35	56	33	55	34	51
Westchester .....	22	41	20	39	21	37
Total .....	* 179	* 266	* 167	* 254	* 161	* 221

\* The totals represent the actual motor vehicle conformity emissions budgets for VOC and NO<sub>x</sub>. New York subdivided the county budget numbers from the totals and rounded off to the nearest whole number, therefore, a sum of the county budget numbers identified in Table 4 may be slightly different from the total budget numbers identified in Table 4.

EPA is proposing to approve New York's 2002, 2005 and 2007 emission budgets.

#### What Are EPA's Conclusions?

EPA has evaluated these submittals for consistency with the Act, applicable EPA regulations, and EPA policy. EPA is proposing approval of New York's: 2002, 2005 and 2007 ozone projection emission inventories; 2002, 2005 and 2007 RFP Plans; transportation conformity budgets; contingency measures; and the enforceable commitments for the 1-hour ozone attainment demonstration.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2001.

**Kathleen C. Callahan,**

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[FR Doc. 01-20263 Filed 8-10-01; 8:45 am]

BILLING CODE 6560-50-P