with the stated goal of Executive Order 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(215)(i)(B)(*4*) and (c)(601)(i)(B) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(215) * * *

(i) * * *

(B) * * *

(*4*) Previously approved on February 29, 1996, in paragraph (c)(215)(i)(B)(*2*) of this section and now deleted with replacement in (c)(601)(i)(B)(*1*) of this section: Rule 71, adopted on December 13, 1994.

* * * * *

(601) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 71, ''Crude Oil and Reactive Organic Compound Liquids,'' revised on May 11, 2021.

(*2*) [Reserved]

* * * * *

[FR Doc. 2024–17578 Filed 8–14–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2020–0455; FRL–11807–02–R2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze State Implementation Plan (SIP) revision submitted by the State of New York through the Department of Environmental Conservation (NYSDEC or New York) on May 12, 2020, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR) for the program's second implementation period. New York's SIP submission addresses the requirement that States must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to the CAA.

DATES: This final rule is effective on September 16, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2020–0455. 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: Robert Rutherford, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3712, or by email at *Rutherford.Robert@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background

On May 12, 2020, the State of New York through the Department of Environmental Conservation (NYSDEC or New York) submitted a revision to its SIP to address regional haze for the second implementation period. NYSDEC made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308.

On March 22, 2024, the EPA published a notice of proposed rulemaking (NPRM) in which the EPA proposed to approve New York's May 12, 2020, SIP submission as satisfying the regional haze requirements for the second implementation period contained in the CAA and 40 CFR 51.308. 89 FR 20384. The EPA is now determining that the New York regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving New York's submission into its SIP.

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 March 22, 2024, NPRM (89 FR 20384).

II. Evaluation of Comments

In response to the EPA's March 22, 2024, NPRM, the EPA received four distinct comments during the 30-day public comment period. One of the

comments was submitted in the form of a letter and was signed by three Non-Governmental Organization (NGO) conservation groups writing as a coalition (*i.e.,* the National Parks Conservation Association (NPCA), Sierra Club, and the Coalition to Protect America's National Parks). The NGO commenters state in their comment letter that they ''do not oppose EPA's proposal to approve New York's [Regional Haze] SIP Revision,'' but rather ''urge EPA to address the issues raised [in the comment letter] before finalizing'' the approval.

Two comments received were submitted by individuals. The final comment was submitted by the Mid-Atlantic/Northeast Visibility Union (MANE–VU) in support of the EPA's proposed action.

The specific comments may be viewed in Docket ID Number EPA–R02–OAR–2020–0455 on the *www.regulations.gov* website. The EPA's summary of and response to those comments is provided below.

Comment: The individual commenter provides various reference materials. Among the reference materials are various links to websites providing general information related to regional haze and other matters, none of which specifically relate to this action.

Response: The EPA acknowledges receipt of the additional information shared by the commenter.

Comment: The individual commenter states that air quality in the average New York City neighborhood is most severely compromised by motor vehicle emissions and hazards created because of climate change. To address this, the commenter promotes the increased availability of public transportation to reduce the need for individual car use, as well as the regulation of motor vehicle emissions. The commenter then suggests the maintenance of electrical power lines should be considered due to their potential to cause wildfires when the states address energy efficiency under Ask 6. Finally, the commenter expresses that they do not support the EPA's approval of New York's SIP until the commenter's concerns are addressed.

Response: The EPA acknowledges the commenter's concerns regarding the impact that motor vehicle emissions and climate change induced hazards have on air quality. Regarding the commenter's promotion of public transportation to reduce the need for individual car use, the EPA has determined that this outside the scope of our proposed action and the EPA will not be providing a specific response to this portion of the comment. As for the commenter's recommendation relating to the regulation of motor vehicle emissions, as provided within the NPRM, New York identified in its submission to the EPA, its consideration of the Heavy Duty Diesel Engine Standard, Tier 3 Motor Vehicle Standards, Light Duty Vehicle GHG Rule for Model-Year 2017–2025, and SIP-approved part 217, ''Motor Vehicle Emissions,'' when developing its Long-Term Strategy to address emissions of on-road sources.[1]

While the commenter expresses concern over the maintenance of electrical power lines to prevent wildfires and claims this should be addressed when States consider energy efficiency under Ask 6, the EPA finds the SIP submission sufficiently addresses the applicable requirements of the CAA and the RHR for the second planning period.

Comment: The NGO commenters express concern with the EPA's suggestion that part of the basis for its approval of New York's SIP revision was the fact that the uniform rate of progress (URP) for several impacted Class I areas is well below the respective 2028 glidepath and stated that the EPA has made it clear that the glidepath is not a safe harbor to avoid requiring additional reasonable progress measures for Class I areas. The NGO commenters posit that the EPA could not rely on the fact that the Class I areas impacted by New York sources were well below their respective URP glidepaths to excuse New York from conducting rigorous Four-Factor Analyses (FFA) to determine whether additional control measures are necessary for reasonable progress.

Response: The EPA has stated that being below the URP glidepath is not a safe harbor (*i.e.,* not a basis for not evaluating sources, considering the four statutory factors, and potentially requiring control measures), and in evaluating the State's source selection and control measure determinations, the EPA did not rely on the fact that the Class I areas impacted by New York sources are below their respective URP glidepaths. Rather, the EPA factually stated that the 2028 projections for the Class I areas that New York contributes to are all well below their respective glidepaths. This factual statement is necessary to support the determination that New York satisfied the applicable requirements of 40 CFR 51.308(f)(3), relating to reasonable progress goals (RPGs) for each Class I area. Specifically, 40 CFR 51.308(f)(3)(ii)(B), which applies to all States, is satisfied by the analyses the State provided within its long-term strategy, as detailed under Section 10 of the State's submittal, and by the estimated combined visibility benefits of strategies detailed in section 9.5 of the State's submittal. The EPA determined that because the Class I areas that New York contributes to are all well below their respective glidepaths, New York was not required to conduct the ''robust demonstration'' detailed under 40 CFR 51.308(f)(3)(ii)(B).

Comment: The NGO commenters express concern with the EPA's endorsement of New York's relied upon source selection threshold. The NGO commenters also express concern that New York's use of the MANE–VU's source selection threshold of 3.0 inverse megameters (Mm^{-1}), was unreasonably high. Using this threshold, New York identified seven sources, which was then further winnowed down to include only two sources for further consideration of an FFA.

In addition, the NGO commenters express concern that New York failed to select the 29 additional significant sources identified by the Federal Land Managers (FLMs) for detailed FFAs and that the MANE–VU 2 percent or greater sulfate-plus-nitrate threshold, used to determine whether New York emissions contribute to visibility impairment at a particular Class I area, was an extremely low triggering threshold. Thus, the NGO commenters suggest that New York should have used a lower threshold that would have captured a more meaningful portion of in-state sources, such as an emissions over distance (Q/d) threshold of 5 or an equivalent threshold that captures at least 80 percent of the State's haze-forming emissions.

Response: As explained in the NPRM,[2] the EPA does not necessarily agree that the 3.0 Mm^{-1} visibility impact is a reasonable threshold for source selection. The RHR recognizes that, due to the nature of regional haze visibility impairment, numerous and sometimes relatively small sources may need to be selected and evaluated for implementation of control measures to make reasonable progress.[3] As the EPA has explained, while States have discretion to choose any source selection threshold that is reasonable, ''[a] state that relies on a visibility (or proxy for visibility impact) threshold to select sources for FFA should set the threshold at a level that captures a meaningful portion of the State's total

[1] *See* 89 FR 20384, 20405 (March 22, 2024).

[2] *See* 89 FR 20401–20402 (March 22, 2024).

[3] *See* Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, EPA Office of Air Quality Planning and Standards, at 4 (July 8, 2021) (''2021 Clarifications Memo'').

contribution to visibility impairment to Class I areas.'' In this case, the 3.0 Mm^{-1} threshold used in MANE–VU Ask 2 identified seven sources in New York (and 22 across the entire MANE–VU region), indicating that it may, in some cases, be unreasonably high.

Notwithstanding the above, in this instance, the EPA proposed to find that New York's additional information and explanation indicated that the State had in fact examined a reasonable set of sources—including sources flagged by the FLMs—and that the State had reasonably concluded that FFAs for its top-impacting sources were not necessary because the outcome would be that no further emission reductions would be reasonable.

While the FLMs identified sources beyond those for which New York conducted FFAs, the State provides in its submittal that the MANE–VU's analysis of these additional facilities, separate of the source selection threshold analysis MANE–VU conducted and previously mentioned, determined they did not require FFAs. Moreover, regarding the facilities identified by the National Park Service (NPS) for FFA consideration, New York provides in its response to comments, that it did reassess the controls on these facilities and determined that more controls were not necessary.[4]

Furthermore, the EPA based the proposed approval on the State's examination of its largest operating electric generating units (EGUs) and its industrial commercial institutional (ICI) boilers, at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on New York's existing SIP-approved NO_X and SO_2 rules that effectively control emissions from the largest contributing stationary-source sectors.

The EPA acknowledges the NGO commenters' suggestion that New York should have used a lower source selection threshold and evaluated additional sources identified by the Federal Land Managers. That said, the RHR does not require States to consider controls for all sources, all source categories, or any or all sources in a particular source category. Rather, States have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained.[5] To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission must include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this instance, the EPA proposed to find that New York had demonstrated that the sources of SO_2 and NO_X within the State that would be expected to contribute to visibility impairment have small emissions of those pollutants, are subject to stringent SIP-approved emission control measures, or both.

New York's information and explanation indicate that the State examined a reasonable set of sources, including sources captured by the other MANE–VU Asks and sources flagged by the FLMs, and reasonably concluded that additional FFAs were not necessary because the outcome would be that no further emission reductions would be reasonable for this planning period.

Comment: The NGO commenters express concern with the EPA's proposed approval of New York excluding sources from a FFA by asserting sources are effectively controlled and exempt from consideration. The NGO commenters reference Regional Haze guidance documents and the CAA to reason that the demonstrations for numerous sources, provided by New York, are highly flawed and fail to adequately demonstrate that facilities within New York are effectively controlled.

Response: The EPA's approval of New York's Regional Haze SIP is based on New York's satisfaction of the applicable regulatory requirements for the second planning period in 40 CFR 51.308(f), (g), and (i). These requirements include that States must evaluate and determine the emission reduction measures necessary to make reasonable progress by considering the four statutory factors and that the measures that are necessary for reasonable progress must be in the SIP. New York's submission includes FFAs in response to Asks 2 (for NO_X) and 3 (for SO_2 emissions from sources across the State). As the EPA explained in the NPRM, in assessing its compliance with these Asks, New York explicitly engaged with the statutory and regulatory requirement to determine measures necessary for reasonable progress based on the four factors. As a result, the EPA proposed in the NPRM to approve New York's SIP submittal as satisfying the requirement of 40 CFR 51.308(f)(2)(i) that a State determine the emission reduction measures that are necessary to make reasonable progress by considering the four factors.

Moreover, New York's long-term strategy relied on several State air pollution control regulations already approved into the SIP, including 6 NYCRR subpart 225–1, *Fuel Composition and Use—Sulfur Limitations,* 6 NYCRR part 219, *Incinerators,* and 6 NYCRR subpart 227–2, *Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen* (NO_X). The EPA finds that these regulations sufficiently address the long-term strategy requirements of the RHR because they establish emission limits for various source categories, which will reduce the formation of visibility impairing pollutants. Thus, the EPA is appropriately finalizing its approval of New York's Regional Haze SIP revision based on the EPA's determination that New York's SIP, including its long-term strategy, satisfies the requirements of 40 CFR 51.308(f)(2)(i).

Contrary to the NGO commenters' arguments, New York's reliance on already effective controls in lieu of FFAs for other sources in the State is not inconsistent with the CAA or the EPA's Regional Haze Guidance. As the comment notes, the EPA stated in the NPRM that the CAA and RHR do not require that every State must analyze the four factors for *all* sources. Indeed, the Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on States' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state.[6]

Accordingly, in both guidance documents, the ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' issued by EPA in August 2019 (''2019 Guidance'') and the 2021 Clarifications Memo, the EPA recognized that a State may reasonably decide not to select sources that have recently installed effective controls.[7] As the EPA stated in the 2021 Clarifications Memo, ''The underlying rationale for the 'effective controls' flexibility is that if a source's emissions are already well controlled, it is unlikely that further cost-effective reductions are available.'' [8] In such a scenario, per the guidance, the State should explain why it is reasonable to assume that a full FFA would likely result in the conclusion that no further controls are necessary.[9]

[4] *See* ''NY Response to Public Comments 05–07–2020'', as was provided within the State's submittal to the EPA and is included within the docket for this rulemaking.

[5] *See* Clarifications Memo at Sections 2 and 2.1.

[6] *See* 89 FR 20387 (March 22, 2024).

[7] 2019 Guidance at 22–25; 2021 Clarifications Memo at 5.

[8] 2021 Clarifications Memo at 5.

[9] 2019 Guidance at 23; 2021 Clarifications Memo at 5.

In this case, New York evaluated those sources that had recently installed controls, including applicable facility permits and regulations, and demonstrated that the high level of control already required makes it reasonable to conclude that the controls were effective; a full FFA would likely result in the conclusion that no further controls are necessary. Thus, the EPA finds that New York satisfied the requirements of the RHR, as clarified by EPA Guidance.

Comment: The NGO commenters express concern with the lack of source specific FFA information for the two sources, Finch Paper and Lafarge Building Materials, which New York selected for FFAs. Specifically, the NGO commenters' claim that New York did not provide any of the required documentation to support its reasonable progress determinations for these two facilities and that New York's conclusory statements relied on an outdated RACT analysis and MACT compliance requirement, and not on FFAs. Similarly, the NGO commenters argue that New York's abbreviated analysis for Lafarge Building Materials do not comport with the legal requirements of an FFA.

Additionally, regarding the determination that the emission limits for Finch Paper and Lafarge Building Materials limit their potential maximum light extinction impact below 3.0 (Mm^{-1}) and well below their previous levels, the NGO commenters assert that a general lowering of emissions below a source screening threshold since the 2011 emissions year on which the MANE–VU based its source-selection screening process, is not an adequate basis for the EPA to approve an otherwise arbitrary FFA. The NGO commenters claim that the EPA's proposed reliance on SIP-approved controls installed at Finch Paper and Lafarge Building Materials, which limit potential contribution to visibility impairment, is inadequate when considering FFA requirements.

Finally, the NGO commenters express concern that there is no documentation that the controls in place at Finch Paper and Lafarge Building Materials are in the SIP. The NGO commenters assert that EPA must require New York to conduct a complete and rigorous FFAs and supplement the SIP. If New York fails to do so, the NGO commenters assert the EPA must conduct the FFAs on the State's behalf, along with providing the necessary supporting documentation.

Response: New York relied on the MANE–VU to target sources for which the State conducted an FFA. Specifically, as New York provides within section 10.6.3 of its submittal, Finch Paper and Lafarge Building Materials were the two sources in the State that were identified via modeling by the MANE–VU to have the potential for 3.0 Mm^{-1} or greater visibility impacts at Class I areas within the MANE–VU region. Accordingly, the State conducted a FFA for both sources pursuant to 40 CFR 51.308(f)(2)(i). New York listed the statutory four factors that States must consider when conducting an FFA, evaluated the individual four factors with respect to each of the two facilities, and determined the emission reduction measures that are necessary to make reasonable progress.[10]

New York considered a RACT analysis and MACT compliance requirements when evaluating the four factors for Finch Paper. New York's submission determined that the phased-in switch from No. 6 fuel oil to natural gas in their boilers (completed by the end of 2015) and the boiler and combustion tune-ups, consistent with 40 CFR part 63, subpart DDDDD (Boiler MACT Rule) (especially for boilers 4 and 5), were adequate upgrades to control emissions. New York states that it has adopted RACT-level controls for NO_X and volatile organic compound (VOC) sources statewide on the largest source categories and that it fully complies with the requirements for Class I areas to identify the RPGs. The EPA finds this analysis and its consideration of the four factors supports the State's reasonable progress determinations for these two facilities and is appropriate for meeting the RHR requirements under 40 CFR 51.308(f)(2)(i).

Regardless of the State's determination that the emission limits for Finch Paper and Lafarge Building Materials limit their potential maximum light extinction impact below 3.0 inverse megameters (Mm^{-1}), the RHR does not provide a particular emission threshold which States must meet when considering installation or upgrade of emission controls under the four factors. However, the State has determined these emission limits will provide for reasonable progress towards achieving natural visibility conditions in Class I areas it impacts. New York evaluated the four factors for both sources under the flexibility provided by the EPA's RHR, which provides States the ability to determine the long-term strategies necessary to make reasonable progress. Therefore, the EPA has determined that the State is taking the necessary steps in accordance with the CAA and RHR to continue improving visibility conditions.

Finally, documentation that the controls in place at Finch Paper and Lafarge Building Materials are in the SIP can be found under EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New York SIP.[11]

Comment: The NGO commenters express concern over New York's reliance on a cost-effectiveness threshold that the NGO commenters consider to be unreasonably low and unable to achieve reductions in visibility-impairing pollution from the State's sources. The NGO commenters suggest New York should have used a higher cost-effectiveness threshold, similar to those employed by other States like Colorado and Nevada, who utilized a $10,000 per ton threshold.

Response: The cost-effectiveness threshold New York relied upon for consideration of what was necessary for reasonable progress was selected in accordance with the RACT requirements found under the NYSDEC 2013 policy, ''DAR–20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT),'' [12] and the EPA has determined that the cost threshold is sufficient in this case. The RHR does not provide a specific cost effectiveness emission threshold which States must meet when considering installation or upgrade of emission controls under the four factors. In this case, New York reasonably evaluated the cost effectiveness of controls for both sources.

While Finch Paper's 2019 RACT analysis determined that six technologies were technically feasible for the power boilers, the cost analysis for three of the technologically feasible controls determined that the costs for these control technologies exceeded the RACT threshold identified in the NYSDEC 2013 policy. Furthermore, Finch Paper had already implemented the other three identified control technologies.[13] Thus, New York determined these control costs were too high to be considered necessary for reasonable progress under the RHR, and the existing controls are sufficient. Moreover, the State did not receive any comments related to the cost-threshold it utilized during its public comment period.

[10] *See* section 10.6.3, *Significant Visibility Impact Sources,* of New York's SIP Revision to the EPA.

[11] *See https://www.epa.gov/air-quality-implementation-plans/epa-approved-nonregulatory-provisions-and-quasi-regulatory-34.*

[12] *See https://extapps.dec.ny.gov/docs/air_pdf/dar20.pdf.*

[13] 89 FR 42810 (May 16, 2024).

Comment: The NGO commenters express concern with the lack of any federally enforceable retirements and shutdowns included within New York's SIP Revision for which the EPA can rely on to support its proposed approval.

Response: The commenter refers to facilities and units at sources that have ceased operating and were therefore not selected for further examination and consideration of the four factors. New York referenced a number of these facilities, including Somerset Operating Company, Cayuga Generating Station, and Lafarge.[14] Contrary to the commenters' argument that New York did not include any enforceable retirements or shutdowns, the State provided information about each of these facilities as evidence of shutdowns or retirements. Evidence of enforceable shutdowns can include a variety of different information. For example, the permanent surrender of permits, evidence of dismantling and/or decommissioning, and specifically a notice of decommissioning from a regional Independent System Operator (in the case of EGUs).

As explained in the NPRM, Lafarge entered a Consent Decree (CD) with the EPA which contained a compliance schedule for the plant to either modernize the existing plant, retrofit the existing wet process kilns with controls, or retire the two wet process kilns.[15] Accordingly, the EPA confirms that the wet process kilns were demolished and are no longer in operation.[16] Regarding the retirement of the primary units at the Somerset Operating Company, the last coal-fired plant operating in New York, the State provided in the supplement to its SIP submission, that the facility is currently being demolished and that it ceased operations and retired on March 30, 2020, following the State's adoption of coal SO_2 regulations under NYCRR part 251, ''CO2 Performance Standards for Major Electric Generating Facilities,'' and after submitting a deactivation plan to the New York Independent System Operator (NYISO).[17] Moreover, the EPA determined that on December 12, 2019, the Somerset Operating Company submitted a complete Generator Deactivation Notice for the retirement of the 675 MW Somerset generator to the NYISO.[18] Similarly, the State provides in the supplement to its submission that Unit 2 and Unit 1 at the Cayuga Generating Station shutdown in July 2018 and November 2019, respectively. The NYISO also determined that Cayuga Generating Station submitted a complete Generator Deactivation Notice for Unit 1 on August 1, 2019. Cayuga Generating Station Unit 2 was also placed in an ICAP Ineligible Forced Outage by the NYISO on July 1, 2019.[19]

Thus, the EPA finds that sufficient evidence has been provided to determine that these facilities are subject to enforceable shutdowns.

Comment: The NGO commenters express concern over the EPA's reliance on fuel switching from coal-fired to burning of natural gas at units lacking a thorough analysis detailing how a fuel conversion impacts visibility impairing pollutants. Additionally, the NGO commenters argue that controls should be considered and required at a new facility or at a facility that switches fuel (converts to natural gas units) to reflect emission rates that have been developed pursuant to an FFA.

Response: The EPA believes it is well understood that converting coal-fired units to natural gas-firing is associated with significant emission reductions. Importantly, the EPA notes that natural gas contains nearly no sulfur, ash, or particulates.[20] Thus, co-firing results in a reduction in SO_2 emissions and particulate emissions respectively, and SO_2 emissions and particulate emissions are reduced by nearly 100% when 100% natural gas is fired.[21] Moreover, due to the characteristically low nitrogen content of natural gas, NO_X formation through the fuel NO_X mechanism is normally low.[22]

The emission benefits from switching to natural gas firing are also detailed within the recent Greenhouse Gas (GHG) Standards and Guidelines for Fossil Fuel-Fired Power Plants, which set emission limits for new gas-fired combustion turbines and emission guidelines for existing coal, oil and gas-fired steam generating units.[23]

Furthermore, regarding the NGO commenters' statement that the EPA must require the State to consider and require controls on converted gas units developed pursuant to a FFA, the EPA recognizes that that a State may reasonably decide not to select sources for further consideration of additional emission controls if the State determines that emissions at a facility fall below a reasonable threshold, as is the case with the RED-Rochester, Morton Salt Division, and Bowline Point Generating Station facilities the NGO commenters reference. In fact, as New York demonstrates under Table 10–4 of its submission, these three facilities still fall below the NGO commenters' suggested $Q/d > 5$ threshold. Thus, the EPA finds that New York reasonably determined these sources did not require further analysis of emission controls via an FFA.

Moreover, since New York provides that these facilities have switched from firing coal to natural gas, and this is expected to result in significant emission reductions of SO_2 and NO_X, the State asserts that emissions at these facilities are already effectively controlled. Thus, contrary to the claim in the comment, the EPA recognizes that a State may reasonably decide not to select sources that have recently installed effective controls.

Comment: The NGO commenters express concern with the EPA's failure to identify what portions of New York's submittal document it proposes to approve as SIP enforceable elements. Specifically, the NGO commenters express concern that there are no revised SIP emission limits for facilities within the State, such as Finch Paper, and that the EPA does not identify the monitoring, reporting, and recordkeeping requirements it proposes to approve for the sources into the SIP.

[14] The commenter (as well as New York) also cited the shutdown of Indian Point Unit 2. However, Indian Point is a nuclear plant and does not have PM or regional haze precursor emissions. Therefore, the operation or retirement of Indian Point Unit 2 is not relevant for the regional haze SIP, nor the State's long-term strategy.

[15] *See U.S.* v. *Lafarge North America, Inc.*, Case 3:10–cv–000440JPG–CJP, available at *https://www.epa.gov/sites/default/files/documents/lafarge-cd.pdf*.

[16] *See* Lafarge Takes Down Old Stack in Controlled Explosion, Melanie Lekocevic, Columbia-Greene Media (November 5, 2017), Hudson Valley 360, available at *http://ns1-wtonset.newscyclecloud.com/article/lafarge-takes-down-old-stack-controlled-explosion*; *see also* New York State Title V permit for Ravena Cement Plant, Condition 12–14 (''Upon commencement of production of clinker from the new kiln (EU 41100), the facility shall immediately discontinue use of the old kilns (EU 41000)''), available at *https://extapps.dec.ny.gov/data/dar/afs/permits/401240000100112_r1_21.pdf*.

[17] The NYISO monitors the reliability of the state's power system and coordinates the daily operations to distribute electricity supply. The NYISO provides open access to the state's transmission system to allow competitive generation services. Energy services companies who offer electricity supply, are required to notify the NYISO of their eligibility status upon receipt of the Department's compliance letter that the retail access application is completed.

[18] *See https://www.nyiso.com/documents/20142/1396324/Somerset-Generator-Deactivation-Assessment-vFinal.pdf/f1fcf261-3d85-9f96-ef8f-70bdd1586505*.

[19] *See https://www.nyiso.com/documents/20142/1396324/Cayuga1and2-Generation-Deactivation-Assessment-vFinal.pdf/9328ed90-41aa-da58-354f-d02fa755f260*.

[20] *See https://www.epa.gov/system/files/documents/2024-04/attachment-5-11-natural-gas-co-firing-methodology.pdf*.

[21] *See https://www.epa.gov/system/files/documents/2024-04/attachment-5-11-natural-gas-co-firing-methodology.pdf*.

[22] *Id.*

[23] 89 FR 39798.

The NGO commenters argue that this prevents the public from reviewing the administrative code or permit conditions that the EPA proposes to include in the SIP and provide comment on whether they satisfy the requirements of the CAA or the RHR.

Response: As provided under the CAA, for proposed action on SIPs, the EPA must create a docket for its proposed action containing all the information on which the proposed action relies. As the NGO commenters note, the EPA references the ''Finch Source Specific State Implementation Plan [SSSIP] Revision,'' which New York submitted to the EPA on May 24, 2022, for the purpose of approving NO_X Reasonably Available Control Technology (RACT) for sources at the Finch Paper facility as required for implementation of the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). While this SSSIP is applicable to NO_X RACT requirements, the EPA finds the NO_X emission reductions associated with the SSSIP to also be consistent with the focus of New York's Regional Haze SIP at issue here, which concerns SO_2 and NO_X emissions and their impacts on visibility impairment at Federal Class I areas. The EPA proposed action on the Finch Paper SSSIP on January 19, 2024,[24] and finalized its approval of this revision on May 16, 2024.[25] Moreover, the EPA provided a copy of the Finch Paper SSSIP submittal, as it was submitted by the State, within the docket for the EPA's proposed action on New York's Regional Haze SIP. The EPA refers the NGO commenters to the publicly available docket for this action.

Although approval of the SSSIP for Finch Paper was finalized and incorporated into New York's SIP after the EPA's proposed action on New York's Plan for the Regional Haze Second Implementation Period, the RACT conditions within the SSSIP were proposed to be included in the SIP as federally enforceable prior to the EPA's proposed action on New York's Plan for the Regional Haze Plan. The monitoring, reporting and recordkeeping requirements to track compliance with the emission limits that are detailed within the Finch Paper SSSIP are included in the permit conditions, which have also since been incorporated into New York's SIP.[26] Furthermore, as detailed later within this final rulemaking, the EPA took several steps to ensure that the public was given the opportunity to adequately be involved with the Federal rulemaking process for the Finch Paper SSSIP. The EPA utilized an enhanced outreach approach which involved the distribution of physical fact sheets to the public, posts across the EPA's social media accounts and the EPA's official website to increase awareness, and an extended public comment period of 60 days to allow the public additional time to provide informed and meaningful comments on the proposed rulemaking. Therefore, the EPA finds that it has provided the public with a sufficient opportunity to review and comment on the regulatory provisions being included in New York's Regional Haze SIP to comply with the CAA and RHR.

Comment: The NGO commenters express concern over the EPA's failure to analyze and meaningfully consider the impacts of this SIP revision on communities with environmental justice (EJ) concerns. In particular, the NGO commenters raise concern with EPA's lack of consideration for EJ in the source-specific analyses in its proposed action, asserting that it is unreasonable for the EPA to ignore its obligations because New York failed to conduct such source-specific analyses.

Response: The regional haze statutory provisions do not explicitly address considerations of EJ, and neither do the regulatory requirements of the second planning period in 40 CFR 51.308(f), (g), and (i). However, the lack of explicit direction does not preclude the State from addressing EJ in the State's SIP submission. As explained in ''EPA Legal Tools to Advance Environmental Justice'' [27] and EPA Regional Haze guidance,[28] the CAA provides States with the discretion to consider environmental justice in developing rules and measures related to regional haze.

In this instance, New York provided details in its submission regarding the passage of the Climate Leadership and Community Protection Act (CLCPA) in July of 2019. The CLCPA requires New York to achieve a carbon free electric system by 2040 and reduce greenhouse gas emissions 85% below 1990 levels by 2050, to expedite the transition to a clean energy economy. New York anticipates that this law will drive investment in clean energy solutions such as wind, solar, energy efficiency and energy storage while targeting investments to benefit disadvantaged communities by creating tens of thousands of new jobs, improving public health and quality of life, and providing all New Yorkers with more robust clean energy choices. Additionally, with CLCPA's focus on EJ, State agencies will be investing at least 35% of clean energy program resources to benefit disadvantaged communities.

As stated earlier in this NFRM, during the regulatory process associated with the Source-Specific SIP approval for Finch Paper,[29] the EPA took several steps to ensure that the communities within close proximity to the Finch Paper facility were given the opportunity to participate in the Federal rulemaking process. The EPA utilized EJScreen to identify EJ concerns within a mile radius of the facility and provided those results within the docket for the rulemaking for transparency and awareness purposes. Additionally, the EPA utilized an enhanced outreach approach which involved the distribution of physical fact sheets to the public, posts across the EPA's social media accounts and the EPA's official website to increase awareness, and an extended public comment period of 60 days to allow the public additional time to provide informed and meaningful comments on the proposed rulemaking.

III. Final Action

The EPA is approving New York's May 12, 2020, SIP submission, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f), (g), and (i).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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,

[24] 89 FR 3620 (January 19, 2024).

[25] 89 FR 42810 (May 16, 2024).

[26] *See https://www.epa.gov/system/files/documents/2024-05/ibr-ny-finch-paper-eff-jan-12-2022.pdf*, as provided on EPA's website for New York's approved SIP (*https://www.epa.gov/air-quality-implementation-plans/epa-approved-new-york-source-specific-requirements*).

[27] *See* EPA Legal Tools to Advance Environmental Justice, at 35–36 (May 2022), *available at https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice.*

[28] Clarifications Memo at 16.

[29] *See* 89 FR 42810 (May 16, 2024).

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); and
- 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, the SIP 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 it 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, February 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 State did not evaluate EJ considerations by means of an extensive and comprehensive EJ analysis as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Nevertheless, New York did reference existing EJ programs within its SIP submittal, as described in section V, ''Environmental Justice Considerations,'' of the NPRM. The EPA did not perform an EJ analysis and did not consider EJ in this action. 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.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Alyssa Arcaya,

Acting 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, the table in paragraph (e) is amended by adding the entry ''Regional Haze Plan from 2018–2028'' at 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
*	*	*	*	*
Regional Haze Plan from 2018–2028.	State-wide	05/12/2020	08/15/2024, [insert **Federal Register** citation].	• Full Approval. • New York has met the Regional Haze Rule requirements for the 2nd Implementation Period.

[FR Doc. 2024–18064 Filed 8–14–24; 8:45 am]

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