



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2008-0177; FRL- 9740-9]

Approval and Promulgation of Implementation Plans; Portion of York County, South Carolina

Within Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone

Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve two state implementation plan (SIP) revisions, submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), on August 31, 2007, and April 29, 2010, to address the reasonable further progress (RFP) plan requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the portion of York County, South Carolina that is within the bi-state Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the “bi-state Charlotte Area”) is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina (hereafter referred to as “the York County Area”). EPA is also providing the status of its adequacy determination for the motor vehicle emissions budgets (MVEB) for volatile organic compounds (VOC) that were included in South Carolina’s RFP plan. Further, EPA is approving these MVEB. These actions are being

taken pursuant to section 110 of the Clean Air Act (CAA or Act). EPA will take action on North Carolina's RFP plan for its portion of the bi-state Charlotte Area, in a separate action.

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, "EPA-R04-OAR-2008-0177," by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: 404-562-9019.
4. Mail: "EPA-R04-OAR-2008-0177," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., 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.

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FOR FURTHER INFORMATION CONTACT: Ms. Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9061. Ms. Sara Waterson can be reached via electronic mail at waterson.sara@epa.gov.

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I. What Action is EPA Taking?

EPA is approving revisions to the South Carolina SIP, submitted by the State of South Carolina through SC DHEC, on August 31, 2007, and April 29, 2010, to meet RFP requirements of the CAA for the York County Area for the 1997 8-hour ozone NAAQS. The RFP plan demonstrates that VOC emissions will be reduced by at least 15 percent for the period of 2002 through 2008. Additionally, EPA is approving the required 2008 VOC MVEB which were included in the York County Area RFP plan. EPA is taking these actions because they are consistent with CAA requirements for the requirements for RFP. The York County Area MVEB, expressed in tons per day (tpd) and kilograms per day (kgd), are provided in Table 1 below.

Table 1. York County, South Carolina* 1997 8-Hour Ozone VOC MVEB

York County (partial county) VOC MVEB		
	2008	2008
VOC	6.053 tpd	5,493 kgd

* Represents only the portion of York County that is in the nonattainment area for the bi-state Charlotte Area

EPA is also describing the status of its transportation conformity adequacy determination for the 2008 MVEB.

II. What is the Background for EPA's Action?

A. General Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is

attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004). Ambient air quality monitoring data for the 3-year period must meet the data completeness requirement as determined in 40 CFR part 50, appendix I. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001-2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the bi-state Charlotte Area was classified as a moderate nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date six years after the June 15, 2004, effective date for areas classified as moderate areas for the 1997 8-hour ozone nonattainment designations. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. Therefore, the bi-state Charlotte Area's original attainment date was June 15, 2010. *See* 69 FR 23951, April 30, 2004.

The bi-state Charlotte Area did not attain the 1997 8-hour ozone NAAQS by June 15, 2010 (the applicable attainment date for moderate nonattainment areas); however, the Area

qualified for an extension of the attainment date. Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. In accordance with CAA section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. On May 31, 2011, EPA determined that North Carolina and South Carolina met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. *See* 76 FR 31245. As a result, EPA extended the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS.

On November 15, 2011 (76 FR 70656), EPA determined the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS; and subsequently, on March 7, 2012 (77 FR 13493), EPA determined that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by the applicable attainment date. The determination of attaining data was based upon complete, quality-assured and certified ambient air monitoring data for the 2008-2010 period, showing that the Area had monitored attainment of the 1997 8-hour ozone NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 8-hour ozone NAAQS.¹ *See* 40 CFR 52.2125(a).

¹ Originally, South Carolina submitted SIP revisions, including an attainment demonstration, on August 31, 2007, to address nonattainment requirements related to the 1997 8-hour ozone NAAQS. Specifically, South Carolina submitted an attainment demonstration and associated RACM, a RFP plan, contingency measures, emissions statement, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS for the York County Area. South Carolina withdrew the August 31, 2007, attainment demonstration portion of the SIP for the York County Area on December 22, 2008. On April 29, 2010, South Carolina resubmitted the attainment demonstration SIP, and provided a supplement for the August 31, 2007, RFP plan for the York County Area.

On January 12, 2012, South Carolina withdrew the attainment demonstration submissions (except RFP, emissions statements, and the emissions inventory) as allowed by 40 CFR 51.918 for the York County Area.² Subsequently, EPA approved South Carolina's SIP revisions related to the emissions statements and emissions inventory requirements for the York County Area for the 1997 8-hour ozone NAAQS. For the EPA action related to the emissions statements requirements for the 1997 8-hour ozone NAAQS, see 77 FR 37812 (June 25, 2012). For the EPA action related to the emissions inventory requirements for the 1997 8-hour ozone NAAQS, see 77 FR 29540 (May 18, 2012). Despite the determination of attainment, South Carolina opted to leave the SIP submissions related to the RFP requirements for the 1997 8-hour ozone NAAQS before EPA for action. As such, EPA is taking action to approve South Carolina's August 31, 2007, and April 29, 2010, SIP revisions as they related to the RFP requirements for the 1997 8-hour ozone NAAQS.

B. Background for RFP

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published a rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline" (hereafter referred to as the Phase 2 Rule). Section 182(b)(1) of the CAA and EPA's Phase 2 Rule³ require a state, for each 1997 8-hour ozone nonattainment area that is classified as

² South Carolina did not withdraw any elements related to reasonably available control technology (RACT) requirements, to the extent that these requirements were addressed in the attainment demonstration submissions.

³ RFP regulations are at 40 CFR 51.910.

moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of VOC.

The bi-state Charlotte Area had an attainment date of June 15, 2010 (i.e., that is beyond five years after designation), that was later extended to June 15, 2011. *See* 76 FR 31245 (May 31, 2011). For a moderate area with an attainment date of more than five years after designation, the RFP plan must obtain a 15 percent reduction in ozone precursor emissions for the first six years after the baseline year (2002 through 2008). Since the York County Area did not have a previous plan to address RFP requirements,⁴ the initial RFP requirement for the Area must be met through VOC reductions as required by the 1990 CAA Amendments.

Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the state or EPA, which includes additional controls that would be implemented if the area fails to reach the RFP milestones. While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3 percent of the adjusted base year inventory in the year following the RFP milestone year (i.e., in this case 2008). For more information on contingency measures please see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). Finally, RFP plans must also include a MVEB for the precursors for which the plan is developed. See Section IV of this rulemaking for more information on MVEB requirements.

⁴ Some areas that were designated as moderate or above for the 1-hour ozone NAAQS may have implemented Rate of Progress plans (i.e., plans similar to the RFP requirements) by which the area would have achieved at least a 15 percent reduction in VOC from an initial baseline. Such areas have the flexibility to meet RFP requirements through a reduction in VOC or nitrogen oxides, after the initial achievement in a reduction of at least 15 percent for VOC emissions for the area.

On August 31, 2007, and April 29, 2010, South Carolina submitted RFP plans for the York County Area to address the CAA's requirements for the 1997 8-hour ozone NAAQS. The August 31, 2007, SIP revision (as supplemented by the April 29, 2010, SIP revision) included an attainment demonstration plan, RFP plan for 2008 milestone year, contingency measures, RACT, RACM requirements, on-road VOC MVEB, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs. Today's rulemaking is approving only the RFP plan, including the associated MVEB. The remainder of South Carolina's August 31, 2007, and April 29, 2010, SIP revisions were addressed by previous EPA actions, or by the State's withdrawal of submissions that were no longer necessary.

III. What is EPA's Analysis of the RFP Plan for the York County Area?

On August 31, 2007, and April 29, 2010, South Carolina submitted RFP plans for the York County Area to address the CAA's requirements for the 1997 8-hour ozone NAAQS. Below provides EPA's analysis of South Carolina's RFP submissions.

A. Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 182(a)(1) of the CAA. Because the York County Area as part of the bi-state Charlotte Area did not implement the 15 percent VOC reductions for the 1-hour ozone NAAQS, the requirement for South Carolina to meet RFP is a 15 percent VOC reduction between 2002 and 2008 with continued progress toward attainment through attainment.⁵ EPA recommended 2002 as the base year emissions inventory, and is

⁵ The bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by June 15, 2011, based on 2008-2010 data.

therefore the starting point for calculating RFP. South Carolina submitted its 2002 base year emissions inventory on August 31, 2007. In an action on May 18, 2012, EPA approved South Carolina's 2002 base year emissions inventory for the York County Area for the 1997 8-hour ozone NAAQS. *See* 77 FR 29540. A summary of the York County Area 2002 base year emissions inventories is included in Table 2 below.

Table 2. 2002 Point and Area Sources Annual Emissions for the York County Area (tons per summer day)

County	Point		Area		Non-Road		Mobile	
	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC
York (partial)*	11.1	7.29	2.2	7.48	4.9	3.19	13.8	6.84

* Represents only the portion of York County that is in the nonattainment area for the bi-state Charlotte Area

As mentioned above, EPA has already approved this emissions inventory and thus is not taking comment on these inventories in the parallel proposal to today's direct final action.

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's on-road mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The

emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the York County Area (as part of the bi-state Charlotte Area),⁶ the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six year period following the baseline inventory year. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone NAAQS. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either nitrogen oxides (NO_x) and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year, that is, 2002-2008.

As mentioned earlier and according to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and RVP rules promulgated prior to 1990 are not

⁶ The portion of the bi-state Charlotte Area that was classified as moderate under the 1-hour ozone NAAQS contained the counties of Gaston and Mecklenburg in North Carolina. Gaston and Mecklenburg counties were also designated nonattainment as a part of the 1997 8-hour ozone moderate bi-state Charlotte Area. Although a portion of this Area was classified as moderate for the 1-hour ozone NAAQS, a 15 percent rate of progress (ROP) plan was not submitted for this Area due to its change in attainment status. Specifically, North Carolina submitted a redesignation and maintenance plan request instead before the due date of the 1-hour ozone NAAQS ROP plan. Therefore, because the bi-state Charlotte Area did not implement a 15 percent ROP plan under the 1-hour ozone NAAQS, the Area must have VOC reductions totaling at least 15 percent for the first six years following the baseline inventory year of 2002 in order for the RFP plan to be approved.

creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO_x emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

In the Phase 2 Rule, promulgated on November 29, 2005 (70 FR 71612), EPA outlines Method 1 as the process that states should use to show compliance with RFP for areas like the York County Area. A summary of the steps for Method 1 is provided below.

- Step A is the actual anthropogenic base year VOC emissions inventory in 2002.
- Step B is to account for creditable emissions for RFP.
- Step C is to calculate non-creditable emissions for RFP. Non-creditable emissions include emissions from: (1) motor vehicle exhaust or evaporative emissions regulations promulgated by January 1, 1990; (2) regulations concerning RVP promulgated by November 15, 1990; (3) RACT corrections required prior to November 1990; and (4) corrective inspection and maintenance (I/M) plan required prior to November 1990.
- Step D is the 2002 base year emissions (Step A) minus the non-creditable emissions (Step C).
- Step E is to calculate the 2008 target level VOC emissions. This is calculated by reducing the emissions from Step D by 15 percent.
- The estimated 2008 VOC emissions are then compared to the 2008 target level VOC emissions (Step E).

As provided in South Carolina's August 31, 2007, SIP revision (as supplemented by the April 29, 2010, SIP revision), the State utilized the steps from Method 1 of the Phase 2 Rule.

Specifically, South Carolina sets out its calculations in Section VI.B.2 of the August 31, 2007, plan and SC DHEC's April 29, 2010, SIP revision as summarized below.

1. Step A: Estimate the actual anthropogenic base year VOC inventory in 2002 with all 2002 control programs in place for all sources.

South Carolina provided this emission inventory in Table VI-1 of the April 29, 2010, York County RFP plan, and as shown in Table 3, below. As mentioned above, EPA has already approved this inventory. *See* 77 FR 29540 (May 18, 2012).

Table 3. 2002 VOC Emissions Inventory for the York County Area (tons per summer day)

	Point	Area	Nonroad	Mobile	Total
York*	7.29	7.48	3.19	6.84	24.80

* Represents only the portion of York County that is in the nonattainment area for the bi-state Charlotte Area

2. Step B: Using the same highway vehicle activity inputs used to calculate the actual 2002 inventory, run the appropriate motor vehicle emissions model for 2002 and for 2008 with all post-1990 CAA measures turned off. Any other local inputs for vehicle I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 pounds per square inch (psi) depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

South Carolina conducted the mobile modeling in accordance with the directions outlined above for Step B. For the York County Area, the RVP requirement was set at 9.0 psi. Currently, I/M is not required in the York County Area, nor were there any outstanding obligations for the State to correct deficiencies for an existing or required I/M program. The York County Area was

not designated nonattainment for the ozone NAAQS until June 15, 2005, and thus did not have outstanding requirements related I/M.

- 3. Step C: Calculate the difference between the 2002 and 2008 VOC emission factors calculated in Step B and multiply by the 2002 vehicle miles traveled. The result is the VOC emission calculation that will occur between 2002 and 2008 without the benefits of any post-1990 CAA measures. These are the non-creditable reductions that occur over this period.**

South Carolina calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference. This difference resulted in 1.00 tpd and can be found in Table VI-3 of the State's August 31, 2007, SIP revision.

- 4. Step D: Subtract the non-creditable reductions calculated in Step C from the actual anthropogenic 2002 inventory estimated in Step A. This adjusted VOC inventory is the basis for calculating the target level of emissions in 2008.**

The adjusted VOC inventory for calculating the target level of VOC emissions reductions for 2008 is 23.80 tpd (i.e., 24.80 tpd (i.e., result of Step A) and 1.00 tpd (i.e., the result of Step C)).

- 5. Step E: Reduce the adjusted VOC inventory calculated in Step D by 15 percent. The result is the target level of VOC emissions in 2008 in order to meet the 2008 RFP requirement. The actual projected 2008 inventory for all sources with all control measures in place, including projected 2008 growth in activity, must be at or lower than this target level of emissions.**

The targeted level of emissions reductions for the York County Area to meet RFP requirements is 3.57 tpd of VOC (i.e, 23.80 tpd multiplied by 15 percent). Thus the required targeted level of VOC emissions is 20.23 tpd for the York County Area.

C. Final Analysis of South Carolina's RFP Analysis for the York County Area

As mentioned above, the required target level for the York County Area to meet the initial RFP plan requirement is a 15 percent reduction in VOC emissions for 2008 from the VOC emissions in 2002 (as adjusted per CAA requirements). Specifically, to meet this requirement, South Carolina needed to demonstrate a reduction of at least 3.57 tpd. Table 4 below summarizes the results of South Carolina's calculations for this RFP analysis.

Table 4. York County Area 15 Percent RFP Analysis

Step from Method 1	Matrix	VOC (tpd)
Step A	Total 2002 Base Year Anthropogenic VOC Emissions	24.80
Step C	Non-Creditable VOC reductions	1.00
Step D	2002 Base Year minus the Non-Creditable Emissions	23.80
Step E	2008 Target Level of VOC Emissions	20.23

In its August 31, 2007, SIP revision, South Carolina calculated the 2008 VOC emissions inventory for the York County Area. This emissions inventory is provided below in Table 5 below.

Table 5. 2008 VOC Emissions Inventory for the York County Area (tons per summer day)

	Point	Area	Nonroad	Mobile	Total
York*	3.60	7.90	2.40	3.94	17.84

* Represents only the portion of York County that is in the nonattainment area for the bi-state Charlotte Area

As discussed above, the required target for VOC emissions for the year 2008 for South Carolina to meet the RFP requirements for York County is 20.23 tpd (i.e., 15 percent reduction from the adjusted 2002 baseline). As revealed in Table 5, South Carolina calculated an emissions inventory of 17.84 tpd of VOC for York County in 2008, which is well below the 20.23 tpd required target. Thus, EPA is making the determination that South Carolina's SIP revision demonstrates the required progress towards attainment for the York County Area as part of the bi-state Charlotte Area. In today's action, EPA is approving South Carolina's August 31, 2007, and April 29, 2010, SIP revisions as meeting the CAA and EPA's regulations regarding RFP.

IV. What is EPA's Analysis of the 2008 VOC MVEB for the York County Area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstrations) and maintenance plans create MVEB for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the target year and precursor pollutant of the RFP (i.e., in this case, for the target year of 2008 and for VOC). A state may adopt MVEB for other precursors as well. The MVEB is the portion of the total allowable emissions in the RFP plan that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the York County Area, South Carolina developed VOC MVEB for the year 2008. Specifically, South Carolina developed these MVEB, as required, for the target year and precursor – 2008 and VOC – for the RFP plan. The York County Area MVEB for the 2008 RFP plan are based on the projected 2008 mobile source emissions accounting for all mobile control measures. The 2008 VOC MVEB are defined in Table 6 below.

Table 6. York County, South Carolina* 1997 8-Hour Ozone VOC MVEB

York County (partial county) VOC MVEB		
	2008	2008
VOC	6.053 tpd	5,493 kgd

* Represents only the portion of York County that is in the nonattainment area for the bi-state Charlotte Area

Through this rulemaking, EPA is approving the 2008 VOC MVEB for the York County Area because EPA has made the determination that the Area is on target to attain the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEB for the York County Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations for the 1997 8-hour ozone NAAQS for the Metropolitan Planning Organization's long-range transportation plans and transportation improvement programs. After thorough review, EPA has previously determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4) (*see* 77 FR 33454, June 6, 2012), and is now approving the budgets because they are consistent with RFP for the 1997 8-hour ozone NAAQS for the year 2008.

V. What is the Status of EPA's Adequacy Determination for the 2008 VOC MVEB for the York County Area?

When reviewing a submitted "control strategy" SIP, RFP or maintenance plan containing a MVEB, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEB for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments - Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, South Carolina's RFP plan submission includes VOC MVEB for the York County Area for the year 2008. EPA reviewed the VOC MVEB through the adequacy process. The South Carolina SIP submission, including the 2008 VOC MVEB for the York County Area, was open for public comment on EPA's adequacy website on May 13, 2010, found at: <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>. The EPA public comment period on adequacy of the 2008 VOC MVEB for the York County Area closed on June 14, 2010. EPA received comments during the adequacy process. These comments were addressed through the adequacy process, and EPA's responses to these comments can be found on EPA's adequacy website.

In a letter sent on May 25, 2012, EPA notified SC DHEC that the MOBILE6.2-based 2008 VOC MVEB for the York County Area were determined to be adequate for transportation conformity purposes. On June 6, 2012, EPA published its adequacy notice in the Federal Register (77 FR 33454). When EPA found the 2008 VOC MVEB adequate, this triggered a requirement that the new MVEB are used for future transportation conformity determinations. For required regional emissions analysis years beyond 2008, the applicable budgets are the 2008 VOC MVEB. The 2008 VOC MVEB are defined in sections I and IV of this rulemaking.

VI. Final Action

EPA is taking direct final action to approve portions of two SIP revisions, submitted on August 31, 2007, and April 29, 2010, by the State of South Carolina, through the SC DHEC to meet the RFP requirements for the York County Area for the 1997 8-hour ozone NAAQS. Additionally, EPA is approving the VOC MVEB for the York County Area that were included in South Carolina's RFP plan. These actions are being taken pursuant to section 110 of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on [Insert date 60 days from date of publication] without further notice unless the Agency receives adverse comment by [Insert date 30 days from date of publication]. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will

then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this RFP for the York County Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the York County Area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes today’s action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: October 2, 2012.

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52--[AMENDED]

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

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

Subpart PP—South Carolina

2. Section 52.2120(e) is amended by adding new entries to the end of the table for “York County 1997 8-hour ozone reasonable further progress plan” and “Update for York County 1997 8-hour ozone reasonable further progress plan” to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

EPA-approved South Carolina non-regulatory provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
York County 1997 8-hour ozone reasonable further progress plan	08/31/07	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Original submission.
Update for York County 1997 8-hour ozone reasonable further progress plan	04/29/10	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Original submission updated to include required 2008 VOC MVEB.

[FR Doc. 2012-25172 Filed 10/12/2012 at 8:45 am; Publication Date: 10/15/2012]