

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
<b>Subchapter B—Electronic Reporting Requirements</b>				
Section 19.10 .....	Use of Electronic Document Receiving System.	2/7/2007	July 23, 2010 [Insert FR page number where document begins.	
Section 19.12 .....	Authorized Electronic Signature .....	2/7/2007	July 23, 2010 [Insert FR page number where document begins.	
Section 19.14 .....	Enforcement .....	2/7/2007	July 23, 2010 [Insert FR page number where document begins.	
<b>Chapter 101—General Air Quality Rules</b>				
<b>Subchapter A—General Rules</b>				
Section 101.10 .....	Emissions Inventory Requirements ....	12/1/1999	July 23, 2010 [Insert FR page number where document begins.	
Section 101.30 .....	Conformity of General Federal Actions to State Implementation Plans.	12/1/1999	July 23, 2010 [Insert FR page number where document begins.	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R02-OAR-2009-0462, FRL-9178-5]

**Approval and Promulgation of Implementation Plans; New York Reasonably Available Control Technology and Reasonably Available Control Measures**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** EPA is conditionally approving the reasonably available control technology requirement which applies to the entire State of New York, including the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas. In addition, EPA is conditionally approving the reasonably available control measure analysis which applies to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area.

**DATES:** *Effective Date:* This rule is effective on August 23, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2009-0462. All documents in the docket are listed on

the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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 either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:** Kirk Wieber ([wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov)), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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**I. What comments did EPA receive in response to its proposal and what action is EPA taking in this final rule?**

On May 4, 2010 (75 FR 23640) the Environmental Protection Agency (EPA) proposed to conditionally approve New York's reasonably available control measure (RACM) analysis and New York's efforts to meet the reasonably available control technology (RACT) requirement. The reader is referred to that rulemaking action for a more detailed discussion of New York's RACT and RACM plans. EPA received no comments in response to the May 4, 2010 proposal. Therefore, in this action, EPA is conditionally approving New York's RACT and RACM plans.

**II. What was included in New York's SIP submittals?**

On September 1, 2006, New York submitted its State-wide 8-hour ozone RACT SIP, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard. On February 8, 2008, New York submitted two comprehensive 8-hour ozone SIPs—one for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" and one for the Poughkeepsie nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for Poughkeepsie, NY Area." The submittals included the 2002 base year emissions inventory,

projection year emissions, attainment demonstrations, Reasonable Further Progress (RFP) plans, RACT analysis, RACM analysis, contingency measures, new source review and on-road motor vehicle emission budgets. These proposed SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIP revisions before adopting the plans and submitting them for EPA review and rulemaking action.

Included in New York's February 8, 2008 8-hour Ozone SIP submittal was a list of additional control measures identified by the State as RACT and RACM. The State committed to adopt additional control measures applicable to the following source categories: Adhesives and Sealants, Consumer Products, Portable Fuel Containers, Graphic Arts, Asphalt Formulation, Asphalt Paving Production, Portland Cement Plants, Glass Manufacturing, and NOx RACT.

Of the source categories identified by New York, the State adopted rules for Portable Fuel Containers on July 15, 2009, and for Consumer Products on September 30, 2009. New York submitted the Consumer Products rule (on October 21, 2009) and the Portable Fuel Container rule (on November 23, 2009) to EPA, for review and approval into the SIP. On May 28, 2010 (75 FR 29897), EPA approved New York's Consumer Products and Portable Fuel Container rules.

On April 15, 2010, New York submitted a letter committing to adopt the necessary control measures that will satisfy the RACT and RACM requirement by August 31, 2010, which is no more than one year from our final action on the RACT and RACM SIP submittals.

### III. What is the rationale for this approval action?

On August 25, 2009 (74 FR 42813), EPA proposed to disapprove New York's RACT and RACM plans. In that proposed rulemaking action, EPA made suggestions for how New York could correct the identified deficiencies and strengthen the 8-hour ozone SIP (see 74 FR 42819). As discussed in Section II, New York adopted and submitted for inclusion in the SIP two of the control measures it had adopted. On December 23, 2009, New York proposed adoption of all but one of the remaining additional control measures that it committed to adopt as satisfying the RACT and RACM requirement. On April 21, 2010, New York proposed adoption of that one remaining control measure. Based on this recent progress and on

New York's April 15, 2010 letter committing to submit adopted RACT/RACM rules by August 31, 2010, EPA proposed a conditional approval of the RACT and RACM SIPs for the 8-hour ozone NAAQS on May 4, 2010. EPA has determined that New York should be able to meet this commitment because the State has already adopted rules for two of the source categories and proposed RACT/RACM provisions for all of the remaining source categories.

### IV. What are EPA's conclusions?

EPA is conditionally approving the moderate area RACM analysis for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008 "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" SIP submittal.

EPA is also conditionally approving the September 1, 2006 New York RACT analysis SIP submittal, supplemented on February 8, 2008 and September 16, 2008, which applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

EPA is conditionally approving the RACT and RACM analyses for the 8-hour ozone NAAQS based on New York's letter committing to submit adopted RACT/RACM rules for several source categories by August 31, 2010. EPA has determined that New York should be able to meet this commitment because the State has already adopted rules for two of the source categories and proposed RACT/RACM provisions for all of the remaining source categories.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to adopt the identified regulations. If the State fails to do so, this action will become a disapproval upon the State's failure to meet its commitment. EPA will notify the State by letter that this action has occurred. If the conditional approval converts to a disapproval, the commitment will no longer be a part of the approved New York SIP. Upon notification to the State that the conditional approval has converted to a disapproval, EPA will publish a notice in the **Federal Register** notifying the public that the conditional approval automatically converted to a

disapproval. If EPA disapproves the RACT and RACM SIP submittals, such action will start a sanctions and FIP clock (see section V). If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the RACT and RACM submittals. If EPA approves the submittals, the RACT and RACM analyses will be fully approved into the SIP in their entirety.

### V. What are the consequences if a final conditional approval is converted to a disapproval?

The Act provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan (FIP) if States fail to correct any deficiencies identified by EPA in a final disapproval action within certain timeframes.

#### A. What are the Act's provisions for sanctions?

If EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP submittal if a State fails to make the required submittal. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area.

#### B. What Federal implementation plan provisions apply if a state fails to submit an approvable plan?

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

### VI. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR

51735, October 4, 1993) and is therefore not subject to review under the EO.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this SIP conditional approval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply conditionally approves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This SIP conditional approval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.*, higher offset requirements) may or will flow from this conditional approval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant

economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this final rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. EPA has determined that the final conditional approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action conditionally approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This action does not have federalism implications. It 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, because it merely conditionally approves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is conditionally approving would not

apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP conditional approval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply conditionally approves certain State requirements for inclusion into the SIP.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this final action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely conditionally approves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

*K. Congressional Review Act*

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).

*L. Petitions for Judicial Review*

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 September 21, 2010. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 HH—New York**

■ 2. Section 52.1683 is amended by adding new paragraph (k) to read as follows:

**52.1683 Control strategy: Ozone.**

\* \* \* \* \*

(k)(1) The September 1, 2006 New York reasonably available control technology (RACT) analysis plan submittal, supplemented on February 8, 2008 and September 16, 2008, which applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas is conditionally approved.

(2) The moderate area reasonably available control measure (RACM) analysis for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008 "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" submittal is conditionally approved.

[FR Doc. 2010-18074 Filed 7-22-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-R03-OAR-2010-0431; FRL-9179-1]

**Approval of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard in the Baltimore Moderate Nonattainment Area**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to extend the attainment date from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone national ambient air quality standard (NAAQS). This extension is based in part on air quality data for the 4th highest daily 8-hour monitored value during the 2009 ozone season. Accordingly, EPA is revising the table in our regulations concerning the 8-hour ozone attainment dates in the State of Maryland. EPA is approving the extension of the attainment date for the Baltimore moderate ozone nonattainment area in accordance with the requirements of the Clean Air Act (CAA).

**DATES: Effective Date:** This rule is effective on September 21, 2010 without further notice, unless EPA receives adverse written comment by August 23, 2010. 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:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0431. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington