

during the period from July 1, 2008 through September 30, 2008.

d. The product of the calculation in 2.3c will represent the USPS-determined threshold level for the selected applicant.

#### 2.4 Application

Mailers meeting the eligibility criteria will be contacted by letter, describing the application process and requirements. Mailers interested in applying will be provided with a registration Web site and their USPS-determined threshold level. Mailers meeting the eligibility standards under 709.2.2, and not notified by letter, may request a review of their eligibility by contacting the USPS at [summersale@usps.gov](mailto:summersale@usps.gov). Mailers wishing to dispute their threshold level calculations will be provided with instructions on that process. Following registration, mailers will be notified of their approval for participation in the program, their approved threshold level, and their revised threshold level (if applicable).

#### 2.5 Program Participation

Mailers may participate in the program with qualifying volume as follows:

a. Standard Mail letter and flat volume mailed by the participant through the participant's own permit imprint advance account, precanceled stamp permit(s), or postage meter permit(s);

b. Standard Mail letter and flat volume prepared by a mail service provider, when entered through a permit owned by the participant;

c. Standard Mail letter and flat pieces mailed through a mail service provider's permit, only when the pieces can be identified as being prepared for the participant and when the applicant's prior mailing activity through the mail service provider's permit can be validated.

#### 2.6 Incentive Program Credits

Approved participants demonstrating an increase in Standard Mail letter and flat volume above their approved threshold level qualify for a credit to their applicable permit imprint advance account or, if approved, the permit imprint advance account of a designated mail service provider as follows:

a. The total postage paid for commercial and Nonprofit Standard Mail letters and flats recorded during the program will be identified for each participant.

b. The total postage paid during the program period will be divided by the total number of recorded pieces to

generate the average price per piece for the program period.

c. Participants will receive a credit in the amount of 30 percent of the average price per piece applied to the total number of mailpieces, for the incremental volume above their approved threshold level, recorded during the program period.

#### 2.7 Mailing Activity Review

Mailing activity by participants will be reviewed in the calendar month following the end of the program. The qualifying volume recorded for participants may be adjusted in accordance with the following:

a. The participant's previously determined volume trend will be applied to the volume of Standard Mail letters and flats mailed by the participant within the month of October 2008, to determine the program participant's October 2009 expected volume.

b. The participant's actual October 2009 volume will then be compared to their October 2009 expected volume.

c. Participants failing to meet their October 2009 expected volume will have any shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

\* \* \* \* \*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9-11321 Filed 5-14-09; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2008-0497, FRL-8905-7]

### Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Reasonably Available Control Technology, Reasonably Available Control Measures and Conformity Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of two State Implementation Plan revisions submitted by New Jersey that are intended to meet several Clean Air Act (Act) requirements for attaining the 0.08 part per million (ppm) 8-hour ozone national ambient air quality standards. EPA is approving: the 2008 reasonable

further progress plans and associated 2008 ozone projection year emission inventories, contingency measures for the 2008 reasonable further progress plans, 2008 conformity budgets used for planning purposes, and the reasonably available control measure analysis. In addition, EPA is conditionally approving New Jersey's efforts to meet the reasonably available control technology requirement. The intended effect of this action is to approve those programs that meet Act requirements and to further achieve emission reductions that will be critical to attainment of the national ambient air quality standard for ozone in New Jersey's two nonattainment areas.

**DATES:** *Effective Date:* This rule is effective on June 15, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2008-0497. 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:

Raymond Forde ([forde.raymond@epa.gov](mailto:forde.raymond@epa.gov)) concerning emission inventories and reasonable further progress and Paul Truchan ([truchan.paul@epa.gov](mailto:truchan.paul@epa.gov)) concerning other portions of the SIP revision, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

#### SUPPLEMENTARY INFORMATION:

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### I. What action is EPA taking?

The Environmental Protection Agency (EPA) has reviewed elements of New Jersey's comprehensive State Implementation Plan (SIP) revision for the 0.08 ppm 8-hour ozone national ambient air quality standards (NAAQS or standard)<sup>1</sup> along with other related Clean Air Act (Act) requirements necessary to insure attainment of the standard. The EPA is approving: the 2008 reasonable further progress (RFP) plans and associated 2008 ozone projection emission inventories, contingency measures for the 2008 reasonable further progress plans, 2008 conformity budgets used for planning purposes, and the reasonably available control measure analysis, because the State of New Jersey's Department of Environmental Protection (NJDEP) has fully addressed the Act's requirements. In addition, EPA is conditionally approving the RACT SIP for the 8-hour ozone NAAQS based on New Jersey's March 20, 2009 adoption of the additional RACT rules it committed to adopt for 13 source categories.

For additional details on EPA's analysis and findings the reader is referred to the proposal published in the January 16, 2009 **Federal Register** (74 FR 2945) and a more detailed discussion is contained in the Technical Support Document which is available on line at <http://www.regulations.gov>, Docket number EPA-R02-OAR-2008-0497.

### II. What was included in New Jersey's SIP submittals?

After completing the appropriate public notice and comment procedures, New Jersey made a series of submittals in order to address the Act's 8-hour ozone attainment requirements. On August 1, 2007, New Jersey submitted its RACT rules, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard, and also included commitments to adopt revisions to several regulations where the State identified more stringent emission limitations that it believed should now be considered RACT. On October 29, 2007, New Jersey submitted a comprehensive 8-hour ozone SIP for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-

DE nonattainment areas. It included attainment demonstrations, reasonable further progress (RFP) plans for 2008 and 2009, reasonably available control measures analyses for both areas, contingency measures, on-road motor vehicle emission budgets, and general conformity emission budgets for McGuire Air Force Base and Lakehurst Naval Air Station. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs before adopting the plans and submitting them for EPA review and approval into the SIP. Finally, as part of the RACT evaluation, on December 14, 2007, New Jersey submitted to EPA an assessment of how it planned to address EPA's recently revised Control Technique Guidelines (CTGs).

### III. What comments were received?

No comments were received on the January 16, 2009 proposal.

### IV. What SIP Elements is EPA approving?

#### A. Emission Inventories

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the Act. For ozone nonattainment areas, the emissions inventory must contain volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) emissions because these pollutants are precursors to ozone formation. EPA previously approved New Jersey's 2002 Base Year emission inventories on July 10, 2006 (71 FR 38770). In this rulemaking, EPA is approving the 2008 projection year emission inventories as the State used them in developing the RFP Plans.

#### B. Reasonable Further Progress Plans

Section 182(b)(1) of the Act and EPA's 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO<sub>x</sub> from a baseline emissions inventory. The RFP SIP must provide for a 15 percent emission reduction (either NO<sub>x</sub> and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year, that is, 2002-2008. New Jersey's RFP Plan contains the required emission reductions that result from adopted control measures included in

the New Jersey SIP. EPA is approving New Jersey's RFP Plans.

#### C. Contingency Measures

For ozone nonattainment areas classified as moderate or above, states must include in their submittal contingency measures to be implemented if the area fails to make RFP or to attain the NAAQS by the applicable attainment date (sections 172(c)(9) and 182(c)(9)). Contingency measures are additional controls to be implemented in the event the area fails to meet an RFP or attainment milestone. New Jersey's RFP contingency plans contain sufficient emission reductions from specific measures to satisfy EPA requirements. All the emission reductions included in the RFP contingency plans are from adopted measures. EPA is approving New Jersey's RFP contingency plan.

#### D. RACT for Stationary Sources

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above for ozone to adopt RACT. All of New Jersey is subject to this requirement since all counties in the State are located in either of two nonattainment areas that are classified as moderate ozone nonattainment areas for the 8-hour NAAQS for ozone (40 CFR 81.331). The RACT submission from the State of New Jersey consists of: (1) A certification that previously adopted RACT controls in New Jersey's SIP for 101 source categories that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour ozone implementation purposes; (2) a commitment to adopt new or more stringent regulations that represent RACT control levels for both specific source categories and specific sources; and (3) a negative declaration that for certain of CTGs and/or ACTs there are no sources within New Jersey or that there are no sources above the applicability thresholds. EPA is conditionally approving the RACT SIP for the 8-hour ozone NAAQS based on New Jersey's March 20, 2009 adoption of the additional RACT rules it committed to adopt for 13 source categories. EPA will be taking action on these rules in a future rulemaking.

#### E. RACM Analysis

Pursuant to section 172(c)(1) of the Act, states are required to implement all Reasonably Available Control Measures (RACM) as expeditiously as practicable. The State's analysis demonstrated that

<sup>1</sup> Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

none of the RACM's, singularly or in combination, will yield emissions benefits sufficient to advance the 2010 attainment date for the two nonattainment areas in which the New Jersey counties are located. EPA is approving New Jersey's moderate area RACM SIP for the two moderate nonattainment areas in which New Jersey is located.

#### F. Conformity Budgets

Consistent with our adequacy review of New Jersey's submittal (73 FR 41068, July 17, 2008), EPA is approving New Jersey's 2008 motor vehicle emissions budgets associated with the 2008 RFP Plans in Table 1. EPA is also approving the general conformity budgets for McGuire Air Force Base (AFB) and Lakehurst Naval Air Station (NAS) in Table 2.

TABLE 1—APPROVED MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

MPO	2008	
	VOC	NO <sub>x</sub>
NJTPA (except Ocean County) .....	85.38	143.60
NJTPA (Ocean County only) .....	6.93	8.69
DVRPC .....	27.75	69.67
SJTPO .....	14.14	32.93

TABLE 2—APPROVED EMISSION BUDGETS FOR MCGUIRE AFB AND LAKEHURST NAS

Base	Year	VOC (tons/year)	NO <sub>x</sub> (tons/year)
McGuire AFB	2008	730	1,534
	2009	730	1,534
	2010	730	1,534
	2011	730	1,534
Lakehurst NAS	2008	109	563
	2009	115	639
	2010	122	716
	2011	129	793

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

EPA is approving the following SIP elements required by the Act: 2008 RFP Plans and associated 2008 ozone projection year emission inventories, contingency measures for failure to meet the 2008 RFP Plan milestones, 2008 emission budgets used for planning purposes, and moderate area RACM analysis. EPA is conditionally approving the RACT analysis for the 8-hour ozone NAAQS based on New Jersey having fulfilled its commitment to adopt RACT rules for 13 source categories by April 1, 2009. EPA will be

taking action on these rules in a future rulemaking. If EPA approves the submittal, the RACT analysis will be fully approved in its entirety and will replace the RACT conditionally approved into the SIP. These revisions meet the requirements of the Act and EPA's regulations, and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA's regulations.

#### VI. 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 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 (Pub. L. 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 Clean Air Act; 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to 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.

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 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 July 14, 2009. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2009.

**George Pavlou,**

*Acting 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 FF—New Jersey**

■ 2. Section 52.1582 is amended by adding new paragraph (m) to read as follows:

**§ 52.1582 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(m)(1) The 2008 Reasonable Further Progress Plans and associated 2008 ozone projection year emission inventories for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29,

2007 State Implementation Plan revision are approved.

(2) The contingency measures for failure to meet the 2008 RFP Plan milestones for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(3) The moderate area Reasonably Available Control Measure Analysis for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(4) The 2008 motor vehicle emissions budgets for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(5) The general conformity budgets for McGuire AFB and Lakehurst NAS included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(6) The Statewide reasonably available control technology (RACT) analysis for the 8-hour ozone included in the August 1, 2007 State Implementation Plan revision is conditionally approved.

[FR Doc. E9-11158 Filed 5-14-09; 8:45 am]

**BILLING CODE 6560-50-P**