

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State adoption date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds</b>				
*	*	*	*	*
<b>Subchapter C—Volatile Organic Compounds Transfer Operations</b>				
Section 115.211 ....	Emission Specifications.	November 10, 1999 .....	September 5, 2000 .....	Ref 52.2299(c)(104).
Section 115.212 ....	Control Requirements.	November 10, 1999 .....	September 5, 2000 .....	Ref 52.2299(c)(104),52.2270(105)(i)(K).
Section 115.219 ....	Counties and Compliance.	November 10, 1999 .....	September 5, 2000 .....	Ref 52.2299(c)(104),52.2270(105)(i)(K).
*	*	*	*	*

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 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[Region II Docket No. NJ36-2-213, FRL-6860-1]

**Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing approval of New Jersey's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New Jersey's portion of the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding, which includes a regional nitrogen oxides budget and allowance (NO<sub>x</sub> Budget) trading program that will significantly reduce NO<sub>x</sub> emissions generated within the Ozone Transport Region, which includes the State of New Jersey. EPA is approving New Jersey's regulations, which implement Phase II and Phase III of the NO<sub>x</sub> Budget Trading Program, since they reduce NO<sub>x</sub> emissions and help achieve the national ambient air quality standard for ozone.

**DATES:** This rule is effective on October 5, 2000.

**ADDRESSES:** Copies of the State submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.  
 New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Richard Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4014.

**SUPPLEMENTARY INFORMATION:**

**Overview**

The EPA is approving the New Jersey Department of Environmental Protection's (New Jersey's) Nitrogen Oxides Budget and Allowance (NO<sub>x</sub> Budget) Trading Program for 1999, 2000, 2001, 2002 and 2003 and thereafter.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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**EPA's Action**

*What Action Is EPA Approving?*

The EPA is approving a revision to New Jersey's Ozone State Implementation Plan (SIP) which New

Jersey submitted on April 26, 1999 and supplemented on July 31, 2000. This SIP revision relates to New Jersey's NO<sub>x</sub> Budget Trading Program. New Jersey's regulations which implement the NO<sub>x</sub> Budget Trading Program are:

- New Subchapter 31, "NO<sub>x</sub> Budget Program"
- Guidance for Implementation of Emissions Monitoring Requirements for the NO<sub>x</sub> Budget Program, January 28, 1997
- NO<sub>x</sub> Budget Program Monitoring Certification and Reporting Requirements, July 3, 1997
- Electronic Data Reporting, Acid Rain Program/NO<sub>x</sub> Budget Program-Version 2.0, July 3, 1997
- Measurement Protocol for Commercial, Industrial and Residential Facilities, April 28, 1993.

New Jersey also amended Subchapter 3, "Civil administrative penalties for violation of rules adopted pursuant to the Act" to implement the NO<sub>x</sub> Budget Trading Programs. Subchapter 3 contains the mechanisms to enforce the NO<sub>x</sub> Budget Trading Program, which are acceptable to EPA. EPA is not incorporating Subchapter 3 because EPA can take enforcement actions related to SIP penalties under its own corresponding federal regulations.

EPA will propose action on other components of the July 31, 2000 SIP revision in a separate future rulemaking.

*Why Is EPA Approving This Action?*

- EPA is approving this action to:
- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act),
  - Make New Jersey's NO<sub>x</sub> Budget Trading Program federally-enforceable, and
  - Make the significant NO<sub>x</sub> emission reductions available for credit toward the attainment SIP.

*When Did EPA Propose To Approve New Jersey's Program?*

On October 14, 1999, EPA published in the **Federal Register** (64 FR 55662) a Proposed Rulemaking conditioning approval of New Jersey's regulations as a SIP revision and providing for a 30-day public comment period, which ended on November 15, 1999.

*What Did EPA Propose?*

In the October 14, 1999 Proposed Rulemaking, EPA proposed to condition its approval of New Jersey's NO<sub>x</sub> Budget Trading Program on New Jersey including provisions for defining a violation and determining the number of days of a violation should a source not hold enough allowances as of the allowance transfer deadline. EPA also proposed a full approval of New Jersey's NO<sub>x</sub> Budget Trading Program if New Jersey corrected the deficiency before a final rulemaking action, and the correction is consistent with EPA's findings as discussed in the Proposed Rulemaking. EPA said it will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the April 26, 1999 submittal.

New Jersey proposed provisions on August 2, 1999 and adopted provisions in Subchapter 3 on July 31, 2000 which corrected the deficiency for defining a violation and determining the number of days of a violation. New Jersey submitted the amended provisions to EPA as a supplement to the April 26, 1999 SIP submittal on July 31, 2000. The amended provisions in Subchapter 3 are consistent with EPA's guidance.

*What Were the Public's Comments on EPA's Proposal?*

EPA received no public comments regarding the October 14, 1999 Proposed Rulemaking.

*What Is the Ozone Transport Commission's Memorandum of Understanding?*

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, which committed the signatory states to the development and proposal of a region-wide reduction in NO<sub>x</sub> emissions, with one phase of reductions by 1999 and another phase of reductions by 2003. The Act required installation of reasonable available control technology (RACT) to reduce NO<sub>x</sub> emissions by May of 1995 (regarded as Phase I). The OTC MOU obligated further reductions in NO<sub>x</sub> emissions by 1999 (known as Phase II) and by 2003 (known as Phase III).

*Where Is Additional Information Available on EPA's Action?*

A detailed discussion of this program is available in the October 14, 1999 Proposed Rulemaking (64 FR 55662). A Technical Support Document, prepared in support of the proposed rulemaking, contains the full description of New Jersey's submittal and EPA's evaluation. A copy of the Technical Support Document is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

**Conclusion**

EPA is approving New Jersey's program which implements the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding (Phase II and Phase III). The EPA is approving, as part of the SIP, the new regulation Subchapter 31, "NO<sub>x</sub> Budget Program," submitted by New Jersey on April 26, 1999, with supporting documentation submitted on July 31, 2000.

**Administrative Requirements**

*Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (Executive Order) 12866, entitled "Regulatory Planning and Review."

*Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials

early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *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.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### *Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action 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.

#### *Submission to Congress and the Comptroller General*

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 rule 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 5, 2000.

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

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *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 November 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 21, 2000.

**William J. Muszynski, P.E.,**

*Deputy 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 52.1570 is amended by adding new paragraph (c)(69) to read as follows:

#### **§ 52.1570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(69) A revision to the State Implementation Plan submitted on April 26, 1999 and supplemented on July 31, 2000 by the New Jersey Department of Environmental Protection that establishes the NO<sub>x</sub> Budget Trading Program.

(i) Incorporation by reference:

(A) Title 7, Chapter 27, Subchapter 31, of the New Jersey Administrative code entitled "NO<sub>x</sub> Budget Program" adopted on June 17, 1998, and effective on July 20, 1998.

(ii) Additional information.

(A) Letter from the New Jersey Department of Environmental Protection dated April 26, 1999, submitting the NO<sub>x</sub> Budget Trading Program as a revision to the New Jersey State Implementation Plan for ozone.

(B) Letter from the New Jersey Department of Environmental Protection dated July 29, 1999, committing to

correcting the violation definition deficiency within one year of EPA's final action.

(C) Letter from the New Jersey Department of Environmental Protection dated July 31, 2000, supplementing the April 26, 1999 SIP submittal with the amended violation provisions.

(D) Guidance for Implementation of Emissions Monitoring Requirements for

the NO<sub>x</sub> Budget Program, dated January 28, 1997.

(E) NO<sub>x</sub> Budget Program Monitoring Certification and Reporting Requirements, dated July 3, 1997.

(F) Electronic Data Reporting, Acid Rain/NO<sub>x</sub> Budget Program, dated July 3, 1997.

(G) Measurement Protocol for Commercial, Industrial and Residential Facilities, April 28, 1993.

3. Section 52.1605 is amended by adding a new entry for Subchapter 31 under the heading "Title 7, Chapter 27," to the table, in numerical order to read as follows:

**§ 52.1605 EPA—approved New Jersey regulations.**

State regulation	State effective date	EPA approved date	Comments
* * * * *			
Title 7, Chapter 27			
* * * * *			
Subchapter 31, "NO <sub>x</sub> Budget Program."	July 20, 1998	September 5, 2000, [Insert FR page citation].	Approval of NO <sub>x</sub> Budget Trading Program for 1999, 2000, 2001, 2002, 2003 and thereafter.
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 241-0241a; FRL-6853-7]

**Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that addresses emergency episodes.

**DATES:** This rule is effective on November 6, 2000 without further

notice, unless EPA receives adverse comments by October 5, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, 3rd Floor, Sacramento, California 95814-1908

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1189.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What Rule Did the State Submit?*

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

**TABLE 1.—SUBMITTED RULE**

Local agency	Rule #	Rule Title	Adopted	Submitted
Sacramento .....	701	Emergency Episode Plan .....	05/27/99	03/28/00

On May 19, 2000, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

There are previous versions of and SMAQMD Rule 701 in the SIP. We approved a version of SMAQMD Rule

701 on December 5, 1984. The SMAQMD adopted revisions to the SIP-approved version on May 27, 1999, and CARB submitted it to us on March 28, 2000.