EPA is also proposing to approve the final and complete test equipment specifications, test procedures and emission standards that New Jersey submitted to satisfy conditions of EPA's May 14, 1997 interim approval. New Jersey made a revision to its SIP on January 31, 1997 which contained those required elements.

EPA is proposing to find that New Jersey's December 14, 1998, SIP revision submittal adequately remedies the eight de minimus deficiencies previously identified.

Finally, as a consequence of EPA's conclusions regarding the approvability of the elements summarized above, EPA is proposing to change the conditional interim status of the approval of New Jersey's enhanced I/M program to final approval.

**9. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to approve 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. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Taking's'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 31, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01–22738 Filed 9–10–01; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Region 2 Docket No. NY52–228, FRL–7053–5]**

## Approval and Promulgation of Implementation Plans; New York's Reasonably Available Control Measure Analysis

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the New York State Implementation Plan revision involving Reasonably Available Control Measures (RACM). Specifically, EPA is proposing to approve New York's RACM Analysis and determination that there are no additional RACM that may be implemented to advance the 1-hour ozone attainment date from 2007 to 2006 in the New York portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area.

**DATES:** Comments must be received on or before October 11, 2001.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the New York submittals and EPA's Technical Support Document (TSD) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd floor, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

**SUPPLEMENTARY INFORMATION:**

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### What Are the Requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Clean Air Act (the Act) requires State Implementation Plans (SIP) to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA interprets the RACM requirements of section 172(c)(1) in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble), see 57 FR 13498, 13560. In that preamble, EPA

states the principle that potential measures that would not advance the attainment date for an area are not considered RACM. EPA encourages states to consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, the General Preamble provides that if the measures are reasonably available, states should adopt them as RACM. EPA also indicates that states could reject a potential RACM if it would cause substantial widespread and long-term adverse impacts. States are encouraged to consider local conditions, such as economics or implementation concerns, in evaluating potential RACM. On November 30, 1999, John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, issued a memorandum entitled, ''Guidance on the Reasonably Available Control Measures Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas'' which reiterated the Act's RACM requirements.

**What Did New York Include in Its RACM Submittal?**

On June 15, 2001, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA its assessment of whether any RACM are available to advance the attainment date, from 2007 to 2006 or sooner, for the New York portion of the New York-Northern New Jersey-Long Island (New York Metro Area) severe ozone nonattainment area. New York requested that EPA process in parallel the State's adoption of its RACM analysis, which EPA is doing in today's notice. New York held public hearings on July 30 and July 31, 2001 and established a public comment period which closed on August 6, 2001. The State will provide a copy of the public comment record and responsiveness document for EPA to consider before taking final rulemaking action.

**How Does New York's Analysis Address the RACM Requirement?**

New York's analysis of potential RACM considered information from the following sources:

1. Section 108(f) of the Act
2. A list of control measures completed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO)
3. Ozone attainment suggested shortfall measures developed by the Ozone Transport Commission (OTC)
4. Control measures implemented through the California Federal Implementation Plan
5. Control measures implemented in other serious and severe ozone nonattainment areas
6. Control measures suggested by commenters during public comment periods on New York's attainment SIP, and
7. Transportation Control Measures analyzed by the New York State Department of Transportation (NYSDOT) in a document entitled, ''NYSDOT Conformity Measure Analysis''

New York's analysis summed the volatile organic compound (VOC) and oxides of nitrogen ( $NO_X$) potential emission reductions from the numerous possible measures, including all the reductions from all the measures identified in the NYSDOT study. New York's analysis of Transportation Control Measures (TCM's) examined the potential emissions reductions from measures included in the documents listed previously. As part of this evaluation, New York considered local circumstances, such as the fact that the New York Metro Area has a high population density and a well-established public transit system. Many RACM-type measures listed in these documents have already been implemented. Moreover, the New York Metro Area is not experiencing the same rate of growth as other metropolitan areas in the nation, so that RACM's which are appropriate in high growth areas may be less effective here. Of the measures examined by New York, only eight measures were identified as having any potential to provide significant emission reductions and these eight were determined to warrant further evaluation as potential RACM's.

Of the eight measures identified, the most significant portion of the potential emission reductions estimates in New York's analysis come from the night-time construction and alternative fuels programs. Despite their potential emission reductions, these measures are not RACM for the 1-hour ozone standard because they cannot be fully implemented prior to 2007, they need further analysis of air quality benefits/impacts to be considered and will not advance the attainment date.

**What Were the Results of New York's RACM Assessment?**

The NYSDEC's RACM analysis addresses the reasonableness and effectiveness of both additional TCM's and additional stationary source control measures. New York concludes that there are no control measures, above and beyond what the State is already implementing, that would advance the 2007 attainment date specified in the Act for severe ozone nonattainment areas, because, the reductions from any potential RACM measures in the short-term are small compared to the reductions that will be achieved by 2007 through measures that are already in place or through measures which the State has previously committed to implement. In fact, the New York 1-hour Ozone Attainment SIP for the New York Metro Area, the 15 percent Rate of Progress (ROP) plan, the 9 percent post-1996 ROP plan and the continuing 3 percent per year Reasonable Further Progress emission reductions, already require emission controls on a wide variety of sources. Nevertheless, New York clearly states that there is nothing within its RACM assessment that precludes it from adopting the measures discussed in the assessment for the purpose of meeting the requirements for motor vehicle transportation conformity, attainment of the 8-hour ozone standard or any other air quality standard, and control of certain air toxins, or for any other reason to protect public health. In fact, over the period beyond the attainment date, some of these strategies may provide significant benefit. In some instances, there are efforts already underway to implement these.

The combination of measures examined by New York indicate potential reductions, but it is important to note that the estimate did not consider practical limitations in their implementation prior to 2007. Unfortunately, many of the actions needed to bring these measures to full fruition cannot be fully implemented in time to advance the attainment date from 2007 to 2006 or sooner. For the NYSDOT study in particular, the measures are currently under interagency review and represent values at the higher end of the potential emissions reduction range and not values that could potentially be achieved before 2007.

Of the possible emission reductions identified in the State's submittal, a significant portion of those reductions are estimated from construction/ozone action days, alternate fuels and clean fuel fleet programs.

*Construction/Ozone Action Day Program*

The construction analysis assumes the cessation of construction operations on ozone action days or the shifting of emissions from day-time to night-time through day-time construction bans. The ozone action day reductions would

be episodic, and not continuous emission reductions. While this measure may offer long term emission reductions to help achieve the 8-hour ozone standard, significant issues need to be addressed before it can be considered a RACM. These include analyses of: (1) Quantity of night-time construction which already takes place to ensure that emission reduction benefits are not ''double counted;'' (2) air quality impacts to ensure that the night-time emissions for New York are not contributing to ozone problems in downwind nonattainment areas; (3) air pollutant emissions from generators needed for lighting and supporting night-time activities; and (4) costs associated with implementing the construction/ozone action day program.

*Alternate Fuels Consumption*

New York's analysis of the impact of alternate fuel-consuming vehicles examined the benefits associated with conversion of all government vehicles in the New York Metro Area, regardless of vehicle weight, age or function, to use fuels which exhibit fewer emissions than gasoline-consuming vehicles. The analysis concluded that while replacement of all government vehicles to alternate fuel-consuming vehicles has the potential for significant emission reductions and has received strong encouragement by the Federal, state and local governments, that magnitude of vehicle replacement is not practicably achievable by the 2007 attainment date. There is a lack of sufficient infrastructure currently in place for supply of alternate fuel for all government fleets. In addition, the analysis double counts reductions from vehicles that have already been converted. The New York City Department of Transportation currently only has two compressed natural gas (CNG) bus refueling stations capable of handling 200 buses apiece, with plans to convert five more stations by 2005. This would give a total capacity of seven stations for 1400 buses, out of a fleet of 3000 buses available for conversion. Moreover, the analysis does not recognize that existing non-CNG buses may have a useful life that extends beyond 2007 and that it may not be economically feasible to replace these buses before completion of their useful life. The promise of substantial emission reductions associated with this measure is contingent on a phase-in period for fleet vehicle turnover and further infrastructure development, which can be achievable, but not in time to advance attainment by 2006 or sooner. Therefore, this measure cannot be considered a RACM. Nevertheless, EPA believes alternate fuels for government vehicle fleets does offer potential emissions reductions to help achieve long-term environmental benefits.

*Clean Fuel Fleet Program*

In examining the potential emission reductions for the clean fuel fleet program, it should be noted that they were estimated using MOBILE5b modeling projected for the year 2010, not 2006, and were modeled before EPA's recent heavy-duty engine regulations were promulgated (40 CFR Parts 85 and 86). The national heavy-duty engine standards which are required beginning with model year 2002 for most manufacturers, are actually more stringent than the applicable heavy-duty clean fuel fleet emission standards. Consequently, actual emission reductions from a heavy-duty clean fuel fleet program would be significantly less than those projected, and to a large extent would be occurring anyway.

*Remaining Five Measures*

The potential emission reductions associated with the remaining five measures that NYSDOT examined (maintenance equipment, ozone action days, commuter choice, coatings and aircraft support programs) did not consider practical limitations in their implementation prior to 2007. Many of the actions needed to bring these five measures to full fruition cannot be fully implemented in time to advance the attainment date from 2007, and therefore, are not considered RACM. In addition, some of these measures are episodic and would not represent continuous emission reductions. Although these measures may offer long term emission reductions to help achieve the 8-hour ozone standard, a number of analyses must be conducted before any one of these measures can be considered a RACM. These include: (1) An analysis that the emission reduction benefits are not ''double counted'' because the program may already exist in some other form; (2) an analysis that deferred emissions contribute to a reduction in ozone (e.g., limiting use of lawn equipment on ozone alert days may actually be deferring use to subsequent days in the same ozone season); and (3) an economic analysis of the costs associated with implementing the programs.

**Does New York's Submittal Meet the RACM Requirement?**

EPA has reviewed New York's RACM analysis documentation, the process used by the New York State agencies to review and select TCM's and other possible reduction measures for point and area sources for the New York Metro Area and has determined that New York's RACM analysis meets the Act's RACM requirement. Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either are not economically feasible or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures. The attainment demonstration for the New York Metro Area indicates that the ozone benefit expected from regional $NO_X$ reductions is substantial.

The term ''reasonably available control measure'' is not actually defined among the definitions in the Act. Therefore, the EPA interpretation that potential measures may not be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. New York's analysis of its ability to implement RACM includes consideration of whether potential small emissions reductions, from a multitude of sources, create an undue administrative burden to the states and regulated entities. As stated in the General Preamble, EPA believes that states can reject potential measures based on local conditions including cost, see 57 FR 13561.

**What Are EPA's Conclusions?**

EPA has evaluated New York's submittal for consistency with the Act, applicable EPA regulations, and EPA policy. EPA is proposing to approve New York's RACM analysis and to determine that there are no additional RACM's that, when implemented, would advance the attainment date in the New York Metro Area from 2007 to 2006 or sooner. However, EPA does believes that the control strategies considered in New York's RACM analysis may offer some benefits in providing for attainment of an 8-hour ozone standard, and we recommend that New York and other states in the OTR revisit these control strategies for an 8-hour standard.

What Additional Actions Is the State Taking to Provide for Attainment of the 1-hour Ozone Standard?

New York's 1994 attainment demonstration documented that the New York Metro Area could not attain the ozone standard without significant emission reductions from upwind sources. This documentation, along with documentation developed by EPA, led EPA to promulgate the $NO_X$ SIP Call (63 FR 57356) to reduce the transport of pollution into downwind nonattainment areas. In the $NO_X$ SIP Call, EPA concluded that reductions from various upwind states were necessary to provide for timely attainment in various downwind states. The $NO_X$ SIP Call therefore established requirements for control of sources of significant emissions in all upwind states. However, these reductions are not scheduled for full implementation until May 2003. Further, the United States Court of Appeals for the District of Columbia Circuit recently ordered that EPA could not require full implementation of the $NO_X$ SIP Call prior to May 2004. *Michigan, et al.,* v. *EPA*, D. C. Cir. No. 98–1497, Order of Aug. 30, 2000. New York complied with the $NO_X$ SIP Call and established a $NO_X$ trading program as its control program. On May 22, 2001 (66 FR 28059), EPA approved New York's regulations to comply with the $NO_X$ SIP Call. New York requires full implementation by May 2003 for its $NO_X$ sources.

New York, in cooperation with the other OTR states, worked to consider regional control measures and strategies to bring the New York Metro Area into attainment of the ozone standard. New York has committed to adopt the measures to account for this shortfall noted previously by October 31, 2001. In fact, New York has taken a leadership role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. New York will be implementing regulations consistent with the OTC which include; revisions to the consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, controls on portable fuel containers as well as the $NO_X$ model rule ($NO_X$ reductions from sources that are not included in the 1994 OTC $NO_X$ Memorandum of Understanding for regional $NO_X$ reductions or covered by EPA's $NO_X$ SIP Call). New York has begun its regulatory development process for these measures.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed 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 (64 FR 43255, August 10, 1999), 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 Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01–22739 Filed 9–10–01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[AL–056–2–200031; FRL–7053–2]**

## Approval and Promulgation of Air Quality State Implementation Plans (SIP); Alabama: Control of Gasoline Sulfur and Volatility

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to fully approve a SIP revision submitted by the State of Alabama establishing low-sulfur and low-Reid Vapor Pressure (RVP) requirements for gasoline distributed in the Birmingham nonattainment area (Shelby and Jefferson counties in Alabama). Alabama developed these fuel requirements to reduce emissions of nitrogen oxides ( $NO_X$) and volatile organic compounds (VOC) as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Birmingham nonattainment area. EPA is approving Alabama's fuel requirement into the SIP because these fuel requirements are in accordance with the requirements of the Clean Air Act (the Act), and are necessary for the Birmingham nonattainment area to achieve the 1-hour ozone NAAQS in a timely manner.

**DATES:** Comments should be received on or before October 11, 2001.

**ADDRESSES:** All comments should be addressed to: Lynorae Benjamin at the