

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 to approve clarifications to the applicability and compliance methods for particulate matter standards for fuel-burning equipment 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, Carbon monoxide,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2005.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart V—Maryland**

■ 2. In Section 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.09.01, 26.11.09.03 and 26.11.09.06 to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \* [EPA approved regulations.]

**EPA-APPROVED REGULATIONS IN THE MARYLAND SIP**

Code of Maryland administrative regulations (COMAR)	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
* * * * *				
<b>COMAR 26.11.09.01</b>	<b>Control of Fuel-burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations</b>			
26.11.09.01 .....	Definitions .....	6/21/04	7/6/05 .....	Revised Definition of "fuel" in 26.11.09.01.B.2-1.a. [Insert page number where the document begins].
26.11.09.03 .....	General Conditions for Fuel-Burning Equipment.	6/21/04	7/6/05 .....	Revised paragraphs 26.11.09.03.C.1 and 2. [Insert page number where the document begins].
26.11.09.06 .....	Control of Particulate Matter.	6/21/04	7/6/05 .....	Addition of paragraph 26.11.09.06C. [Insert page number where the document begins].
* * * * *				

\* \* \* \* \*  
[FR Doc. 05-13281 Filed 7-5-05; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R06-OAR-2005-TX-0024; FRL-7928-6]

**Approval and Promulgation of Implementation Plans; Texas; Transportation Conformity**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Texas on February 23, 2004, and

on May 17, 2005. These revisions serve to incorporate recent revisions to the federal conformity rule into the state conformity SIP.

**DATES:** This rule is effective on September 6, 2005, without further notice, unless EPA receives relevant adverse comment by August 5, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06-OAR-2005-TX-0024, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/rempub/>. Regional

Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

- EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R06-OAR-2005-TX-0024. EPA's policy is that all comments received will be included in the public file without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Materials in EDocket (RME), [regulations.gov](http://regulations.gov) or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at <http://docket.epa.gov/rempub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file, which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wade, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7247; fax number 214-665-7263; e-mail address [wade.peggy@epa.gov](mailto:wade.peggy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

#### Outline

- I. What Action is EPA Taking?
- II. What is the Background for this Action?
- III. What Did the State Submit and How Did We Evaluate It?
- IV. Final Action
- V. Statutory and Executive Order Reviews

### I. What Action Is EPA Taking?

On May 22, 2003, the Texas Commission on Environmental Quality (TCEQ) submitted revisions to its SIP addressing changes to the transportation conformity rule (30 TAC 114.260) adopted by the state on May 1, 2003. Additionally, on May 17, 2005, EPA received another submittal from TCEQ further revising the transportation conformity rule as adopted by the state on April 27, 2005. These revisions incorporate recent changes in the federal transportation conformity rule into the Texas conformity SIP and are described in detail below. EPA is

approving these revisions to the Texas conformity SIP.

### II. What Is the Background for This Action?

The Federal Clean Air Act Amendments of 1990 (CAA) required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans (MTP), transportation improvement programs (TIP), and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). The conformity rule assures that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and programs stay within the motor vehicle emissions ceiling in the applicable attainment demonstration or maintenance SIP. The transportation conformity SIP enables the state to implement and enforce the Federal transportation conformity requirements at the state level per 40 CFR 51 subpart T and 40 CFR 93 subpart A.

EPA published final rules regarding conformity requirements on November 24, 1993 (58 FR 62188). Since then, EPA has made several amendments to the transportation conformity rules: August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), August 6, 2002 (67 FR 50808), and July 1, 2004 (69 FR 40004). The state of Texas submitted an initial conformity SIP to EPA on November 6, 1994, and we approved this SIP on November 8, 1995 (60 FR 56244). Revisions to this SIP to address the federal rule amendments promulgated up to and including 1997 were submitted by the Governor of Texas on December 10, 1998, and approved by EPA on July 8, 1999 (64 FR 36790). With the current revisions submitted by TCEQ, the state is aligning its rule to the federal conformity rule for all amendments up to and including those promulgated on July 1, 2004.

Specifically, these revisions address a March 2, 1999, ruling by the United States Court of Appeals for the District of Columbia (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The court's ruling affected provisions of the rule that pertained to the funding of MTPs and TIPs; use of motor vehicle emissions budgets (MVEB) prior to SIP approval; federal transportation projects in areas without a conforming MTP and TIP; timing of conformity consequences following an EPA SIP disapproval; and use of submitted safety margins in areas with

approved SIPs submitted prior to November 24, 1993.

More recent changes to the rule are inclusion of criteria and procedures for implementing conformity in accordance with the new National Ambient Air Quality Standards (NAAQS) addressing eight-hour ozone and particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>). Changes relating to the implementation of these new standards are summarized below.

Changes to 40 CFR 93.101 add new definitions for one-hour ozone NAAQS; eight-hour ozone NAAQS; donut areas; isolated rural nonattainment and maintenance areas; and limited maintenance plans. Other federal changes in the rule include provision of a one-year grace period before conformity is required in newly designated nonattainment areas and the addition of PM<sub>2.5</sub> to the list of criteria pollutants (40 CFR 93.102). Changes to 40 CFR 93.104 were made to amend the point by which a conformity determination must be made following a state's submission of a control strategy SIP or maintenance SIP for the first time. This new provision requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's MVEBs are adequate. Changes to the grace period for transportation plan requirements in certain ozone and carbon monoxide nonattainment areas are made in 40 CFR 93.106. 40 CFR 93.109 has been changed to include the applicability of conformity for one-hour ozone nonattainment or maintenance areas until EPA revokes the one-hour ozone NAAQS and additional language related to conformity requirements for the new NAAQS for eight-hour ozone and PM<sub>2.5</sub>. Changes to 40 CFR 93.110 clarify that conformity determinations must be based on the latest planning assumptions in place at the time a conformity analysis begins, rather than at the time of Department of Transportation's conformity finding. Some changes to the methodology of hot-spot analyses were made at 40 CFR 93.116. The rule revisions also made several changes with respect to the MVEB at 40 CFR 93.118 where the adequacy process is discussed. Changes to 40 CFR 93.119 concern use of interim emissions tests in areas without adequate or approved MVEBs. In 40 CFR 93.120, the 120-day grace period previously allowed prior to a conformity freeze has been deleted so that a freeze will occur immediately upon the effective date of a SIP disapproval. EPA amended the rule at 40 CFR 93.121 so that regionally significant, non-federal projects may no longer advance during

a conformity lapse unless they have received all necessary state and local approvals prior to the lapse. EPA also made minor revisions to 40 CFR 93.117 and 40 CFR 93.124–93.126. For a comprehensive guide to all changes in the federal rule, please see the reference document at <http://www.epa.gov/otaq/transp/conform/420b04013.pdf> or the transportation conformity final rule at 69 FR 40004.

### III. What Did the State Submit and How Did We Evaluate It?

With these two SIP submissions, the state is incorporating by reference the changes made to the federal conformity rule up to and including the final rule issued on July 1, 2004 (69 FR 40004), with the exception of the requirements of 40 CFR 93.105. The federal requirements in 40 CFR 93.105 are addressed in the commission's rule in 30 TAC 114.260(d) and are not being changed with this revision. The TCEQ is also making minor changes to other sections of the state conformity rule to correct typographical errors and reflect updated name and style changes within the Commission in accordance with the Texas Legislative Council Drafting Manual of October 2002.

The SIP revision package submitted to EPA on May 22, 2003, contained a revision to 30 TAC 114.452, Control Requirements. EPA is not acting on 30 TAC 114.452 today. This submitted revision allows commercial operators of lawn and garden equipment additional time to submit an alternate emission reduction plan. However, TCEQ has since repealed this rule and EPA will be acting on the repeal in a subsequent **Federal Register** publication. The package submitted in 2003 also contained a revision to 30 TAC 114.21, Exemptions. EPA is not acting on 30 TAC 114.21 today.

### IV. Final Action

EPA is approving the revisions to the Texas conformity SIP and corresponding amendments to 30 TAC 114.260 Transportation Conformity. The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if relevant adverse comments are received. The rule will be effective on September 6, 2005, without further notice unless we receive adverse comment by August 5, 2005. If we receive adverse comment we will publish a timely withdrawal in the

**Federal Register** informing the public this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of adverse comment.

### V. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This 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 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 approves 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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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.

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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

do not apply. 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.*).

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 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 September 6, 2005. 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, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 17, 2005.

**Richard E. Greene,**  
*Regional Administrator, Region 6.*

■ 40 CFR Part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart SS—Texas**

■ 2. In § 52.2270, the table in paragraph (c) entitled "EPA approved regulations in the Texas SIP" under Chapter 114 is amended by revising section 114.260 to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	<b>Chapter 114 (Reg 4) Control of Air Pollution from Motor Vehicles</b>	* * *	* * *	* * *
Section 114.260 .....	Transportation Conformity .....	04/27/2005	7/6/2005 [Insert FR page number where document begins]	*
* * *	* * *	* * *	* * *	* * *