

Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the special local regulation area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the special local regulation area must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 9, 2010.

**E.J. Marohn,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.*

[FR Doc. 2010-9499 Filed 4-22-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2006-0990; FRL-9140-9]

#### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revisions to New Mexico Transportation Conformity Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) concerning the State transportation conformity rules. The plan revisions are intended to ensure consistency with amendments to the Federal Transportation Conformity Rule. These plan revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance.

**DATES:** Written comments should be received on or before May 24, 2010.

**ADDRESSES:** Please see the related direct final rule, which is located in the "Rules and Regulations" section of this **Federal Register**, for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-7263; e-mail address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document proposes to take action on SIP revisions pertaining to the State of New Mexico. We have published a direct final rule approving the State's SIP revisions in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based upon this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: April 9, 2010.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2010-9365 Filed 4-22-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2010-0161, FRL-9141-5]

#### Approval and Promulgation of Implementation Plans; Implementation Plan Revision; State of New Jersey

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve a request from the State of New Jersey to revise its State Implementation Plan (SIP) to incorporate amendments to Subchapter 4 "Control and Prohibition of Particles from Combustion of Fuel," Subchapter 10 "Sulfur in Solid Fuels," Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds," Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen," and related amendments to Subchapter 21 "Emission Statements." The amendments relate to the control of oxides of nitrogen (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), particles and volatile organic compounds (VOCs) from stationary sources. This proposed SIP revision

consists of control measures needed to meet the State's commitment to adopt additional reasonably available control technology (RACT) rules that address RACT requirements for the 1997 national ambient air quality standards for ozone. Additionally, the proposed SIP revision includes control measures that will help the State meet the national ambient air quality standards for fine particles.

The intended effect of this proposed rule is to approve the State control strategy, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone and fine particles required by the Clean Air Act (the Act).

**DATES:** Comments must be received on or before May 24, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2010-0161, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2010-0161. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket 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, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <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. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Truchan ([truchan.paul@epa.gov](mailto:truchan.paul@epa.gov)) concerning Subchapters 16 and 21, Anthony (Ted) Gardella ([gardella.anthony@epa.gov](mailto:gardella.anthony@epa.gov)) concerning Subchapter 19, and Kenneth Fradkin ([fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov)) concerning Subchapters 4 and 10, at the Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** For detailed information on New Jersey's proposed SIP revision see the Technical Support Document (TSD), prepared in support of today's action. The TSD can be viewed at <http://www.regulations.gov>.

The following table of contents describes the format of this rulemaking:

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- E. When Were New Jersey's RACT Requirements Proposed and Adopted?
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- I. What Is EPA's Evaluation of New Jersey's Subchapter 19 "Control and Prohibition of Air Pollution From Oxides of Nitrogen?"
- J. What Is EPA's Evaluation of New Jersey's Subchapter 21—"Emission Statements?"

## II. Conclusion

## III. Statutory and Executive Order Reviews

### I. EPA's Proposed Action

#### A. What Action Is EPA Proposing?

On April 21, 2009 New Jersey submitted a proposed State Implementation Plan (SIP) revision that includes amendments to New Jersey Administrative Code, Title 7: Chapter 27 (NJAC 7:27) Subchapter 4 "Control and Prohibition of Particles from Combustion of Fuel;" Subchapter 8 "Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit);" Subchapter 10 "Sulfur in Solid Fuels;" Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds;" Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen;" and Subchapter 21 "Emission Statements."

EPA proposes to approve the state amendments to Subchapter 4 and Subchapter 10 as revisions to the SIP. These amendments relate to the control of particle and sulfur dioxide emissions and will help the State make advances towards reducing regional haze and meeting the national ambient air quality standards (NAAQS) for fine particles.

EPA will review Subchapter 8 and will address the approvability of all Subchapter 8 amendments in a future action.

EPA proposes to approve, as revisions to the New Jersey ozone SIP, the state-adopted amendments to Subchapter 16 and Subchapter 19, and related amendments to Subchapter 21, each adopted by New Jersey on March 20, 2009, and submitted to EPA on April 21, 2009. New Jersey amended Subchapter 16 and Subchapter 19 to meet the State's

commitment to adopt additional RACT rules for 12 of 13 source categories (see 74 FR 2945, January 16, 2009), which will result in additional emission reductions of NO<sub>x</sub> and VOCs. EPA proposes that New Jersey's state-adopted Subchapters 16 and 19, and the related amendments to Subchapter 21, are fully approvable as SIP-strengthening measures for New Jersey's ozone SIP. The amendments to Subchapters 16, 19 and 21 in New Jersey's submittal meet the State's commitment to adopt additional RACT control measures for 12 of 13 source categories to achieve additional emission reductions of NO<sub>x</sub> and VOCs to attain the 8-hour ozone standard. The one remaining source category, adhesives and sealants, will be addressed in a separate rulemaking.

#### B. Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action;
- Approve control measures which reduce NO<sub>x</sub> and VOC emissions, a precursor of ozone formation, to help attain the NAAQS for ozone;
- Further New Jersey's and EPA's RACT requirements under the Clean Air Act (the Act); and
- Make New Jersey's regulations for additional emission reductions federally enforceable and available for emission reduction credit in the SIP.
- Approve control measures that reduce particles, sulfur dioxide, and NO<sub>x</sub> emissions, to help attain the NAAQS for fine particles.
- Approve control measures that reduce regional haze.

#### C. What Are the Clean Air Act Requirements for RACT?

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above 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 ozone standard (40 CFR 81.331). In accordance with section 182(b), New Jersey must, at a minimum, adopt RACT level controls for sources covered by a Control Techniques Guidelines (CTG) document and for any major non-CTG sources.

Section IV.G of EPA's Phase 2 implementation rule (70 FR 71612, November 29, 2005) (Phase 2 Rule) discusses the RACT requirements for the 1997 8-hour ozone standard. It states, in part, that where a RACT SIP

is required, SIPs implementing the 8-hour ozone standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour ozone implementation purposes or, where necessary, through a new RACT determination. The majority of counties in New Jersey were previously classified under the 1-hour ozone standard as severe, while the remaining counties were subject to RACT as part of the Ozone Transport Region. New Jersey chose a uniform applicability level for RACT based on the severe classification which resulted in a statewide requirement for major sources of NO<sub>x</sub> and VOC to be defined as those having emissions of 25 tons per year or more of both VOC and/or NO<sub>x</sub>. Under the 8-hour standard, areas classified as moderate, the definition for major source is 50 tons per year for VOC and 100 tons per year for NO<sub>x</sub>. However, New Jersey's choice to retain the original 1-hour ozone limits statewide in New Jersey for purposes of the RACT analysis resulted in a more stringent evaluation of RACT. New Jersey's use of 25 tons per year for RACT is consistent with the anti-backsliding requirement of the Act. See Clean Air Act sections 110(l) and 193; and *South Coast Air Quality Management Dist (SCAQMD) v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

#### *D. How Did New Jersey Address the RACT Requirements for the 8-Hour Ozone Standard?*

New Jersey submitted a RACT assessment in an August 1, 2007 submission which was supplemented on December 14, 2007. The RACT submission from the State of New Jersey consisted 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 standard are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for 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 Control Techniques Guidelines and/or Alternative Control Techniques (ACTs) documents there are no sources within New Jersey or that there are no sources above the applicable thresholds.

EPA reviewed the State's RACT analysis and agreed with the State's conclusions. On May 15, 2009 (74 FR 22837) EPA conditionally approved New Jersey's RACT SIP for the 8-hour

ozone standard conditioned on the State's meeting its commitment to submit adopted RACT rules for 13 source categories by April 1, 2009. To address this commitment, on March 20, 2009, New Jersey adopted the RACT rules for the following 12 source categories: Alternative and facility-specific VOC and NO<sub>x</sub> emission limits; emulsified and cutback asphalt used for paving; asphalt pavement production plants; CTGs published in 2006: flat wood paneling, flexible packaging printing materials, and offset lithographic printing and letterpress printing; coal-fired boilers serving electric generating units (EGUs); oil and gas-fired boilers serving EGUs; High Electric Demand Day (HEDD) EGUs; industrial/commercial/institutional boilers and other indirect heat exchangers; municipal solid waste incinerators; glass manufacturing furnaces; sewage sludge incinerators; and VOC stationary storage tanks. The industrial adhesives and sealants source category (13th) was adopted on October 30, 2008 and submitted as a SIP revision on April 9, 2009. EPA will propose action on the adhesives and sealant rule in a separate action.

#### *E. When Were New Jersey's RACT Requirements Proposed and Adopted?*

New Jersey proposed the RACT rules at Subchapters 4, 10, 16 and 19, and related amendments to Subchapter 21, on August 4, 2008, accepted written comments on them until October 3, 2008, and held public hearings on them on September 26, 2008. New Jersey adopted the amended RACT rules and related requirements on March 20, 2009, and submitted them to EPA for approval as revisions to the SIP on April 21, 2009. On June 4, 2009, EPA determined the submittal to be administratively and technically complete.

#### *F. What is EPA's Evaluation of New Jersey's Subchapter 4—"Control and Prohibition of Particles From Combustion of Fuel?"*

New Jersey previously submitted Subchapter 4 (state effective date October 12, 1977) as a SIP revision and EPA approved it on January 27, 1984 (49 FR 3465). In this action, EPA is acting on the April 21, 2009 submittal of amendments to Subchapter 4 that affect the coal-fired boiler source category, which consist of new definitions and more stringent emission limits for facilities that emit particles from coal-fired boilers.

#### **Section 4.1 Definitions**

New Jersey revised section 4.1, Definitions, to add and/or revise terms

and their definitions. EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy, and proposes to approve them.

#### **Section 4.2 Standards for the Emission of Particles**

New Jersey amended section 4.2 of Subchapter 4 to lower the current SIP approved particle emission rates for existing coal-fired boilers and for coal-fired boilers with a particle control apparatus that is newly constructed, installed or reconstructed. Owners/operators must comply with the new particle emission rates unless otherwise specified in an enforceable agreement with New Jersey. Note, particulates and particles are synonymous terms.

The particulate emission rates in section 7:27–4.2(a) are unchanged from emission rates in the current SIP approved Subchapter 4. The emission rates listed in section 7:27–4.2(a) will no longer apply for any coal-fired boiler or particulate control apparatus regulated by new sections 7:27–4.2(b) or 7:27–4.2(c) on and after the required compliance dates. The compliance date for sources subject to 7:27–4.2(b) is May 19, 2009; the compliance date for sources subject to 7:27–4.2(c) is December 15, 2012.

The particulate emission rate listed in section 7:27–4.2(b) of 0.0150 pounds per million BTUs (MMBTU) shall apply for coal fired boilers that have a particulate control apparatus that is newly constructed, installed, reconstructed, and commences operation on or after May 19, 2009. The owner or operator shall demonstrate compliance based on the average of three stack tests, approved by New Jersey, and in accordance with the source's approved permit. A coal-fired boiler or particulate control apparatus is also subject, as applicable, to existing New Jersey state-of-the-art requirements at 7:27–8.12 and 22:35, lowest achievable emission rate requirements at NJAC 7:27–18, and best available control technology requirements at 40 CFR 52.21, which are incorporated into the applicable implementation plan by reference.

Unless regulated by 7:27–4.2(b), the particulate emission rate listed in section 7:27–4.2(c) shall apply for coal fired boilers in operation prior to May 19, 2009. Coal fired boilers are subject to an emission rate limit of 0.0300 pounds per MMBTU, or the permitted emission rate in effect as of May 19, 2009, whichever is lower. The owner or operator shall demonstrate compliance based on the average of three stack tests, approved by New Jersey, and in accordance with the source's approved permit.

EPA supports and proposes to approve the amendments to Subchapter 4, which further reduce particulate emissions in the State.

*G. What Is EPA's Evaluation of New Jersey's Subchapter 10—"Sulfur in Solid Fuels?"*

New Jersey previously submitted Subchapter 10 (state effective date July 14, 1981) as a SIP revision and EPA approved it on November 3, 1981 (46 FR 54542). In this action, EPA is acting on amendments that affect facilities that emit sulfur dioxide (SO<sub>2</sub>) emissions from solid fuel burning sources, including boilers serving electric generating units (EGUs). The amendments include new definitions and more stringent emission limits for SO<sub>2</sub>.

**Section 10.1 Definitions**

New Jersey revised section 10.1, Definitions to add and/or revise terms and their definitions.

EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy, and proposes to approve them.

**Section 10.2 Sulfur Contents Standards**

New Jersey amended section 10.2 of Subchapter 10 to require sources to comply with more stringent SO<sub>2</sub> emission rates contained in section 7:27–10.2(h), and to eliminate the need to control SO<sub>2</sub> emissions by regulating the sulfur content of solid fuel. Owners/operators must comply with the new SO<sub>2</sub> emission rates unless otherwise specified in an enforceable agreement with New Jersey.

Section 7:27–10.2(a), which regulates the sulfur content of solid fuel stored, offered for sale, sold, delivered or exchanged in trade, for use in New Jersey, and section 7:27–10.2(b), which regulates the sulfur content of solid fuel burned, will no longer apply to any source after December 14, 2012.

Additionally, existing section 7:27–10.2(c), which required different emission standards based on the level of SO<sub>2</sub> nonattainment of a particular zone, will no longer apply after December 14, 2012. Existing sections 7:27–10.2(d), (e), and (f), which also regulate SO<sub>2</sub> emissions based on the sulfur content of fuel, and subsection (g), which applies to authorizations granted pursuant to subsection (f), will also no longer apply after December 14, 2012.

Pursuant to section 7:27–10.2(h), all sources that combust solid fuel on or after December 15, 2012 must comply with the maximum SO<sub>2</sub> emission rate of 0.250 pounds/MMBtu gross heat input

based on a 24-hour emission rate and 0.150 pounds/MMBtu gross heat input based on a 30-calendar-day rolling average emission rate. Any source that combusts solid fuel, and that is constructed, installed, reconstructed, or modified, is also subject, as applicable, to existing New Jersey state-of-the-art requirements at 7:27–8.12 and 22:35, lowest achievable emission rate requirements at NJAC 7:27–18, and best available control technology requirements at 40 CFR 52.21, which are incorporated into the applicable implementation plan by reference.

Pursuant to section 7:27–10.2(j), owners/operators of boilers may request, from New Jersey, a one-year extension of the December 15, 2012 compliance deadline. Section 10.2(j) provides the necessary administrative and procedural requirements for owners to submit an extension request and the conditions under which New Jersey will approve the extension request.

EPA supports and proposes to approve the amendments to this existing provision, which address SO<sub>2</sub> emissions from solid fuel burning.

**Section 10.5 SO<sub>2</sub> Emission Rate Determinations**

Section 10.5 of Subchapter 10 is a new provision that establishes procedures for calculating the 24-hour and 30-calendar-day rolling average emission rates for SO<sub>2</sub> that are specified in 10.2(h).

SO<sub>2</sub> emissions must be determined through the use of a Continuous Emissions Monitoring System (CEMS). Section 10.5(c) allows owners/operators to exclude emissions when the units are not combusting solid fuel. Section 10.5(c)1 allows an exemption from the 30 calendar day SO<sub>2</sub> emission rate during the period of startup until the unit begins combusting coal. Section 10.5(c)2 allows an exemption from the 24-hour SO<sub>2</sub> emission rate during the period of time that the boiler does not combust coal. New Jersey provided for this exemption to exclude emissions from periods when the boiler is combusting fuel other than solid fuels, such as fuel oil or natural gas, which can be burned during the start-up of coal fired boilers.

EPA supports these amendments and is proposing to approve them.

*H. What Is EPA's Evaluation of New Jersey's Subchapter 16: "Control and Prohibition of Air Pollution by Volatile Organic Compounds?"*

New Jersey previously submitted Subchapter 16 (state effective date October 17, 2005) as a SIP revision and EPA approved it on July 31, 2007 (72 FR

41626). In this action, EPA is acting on amendments to Subchapter 16 that affect the following VOC sources or source categories: VOC stationary storage tanks; sources subject to control technique guidelines (CTGs) for flat wood paneling coatings, flexible packaging printing materials and offset lithographic printing and letterpress printing; sources subject to alternative or facility-specific VOC control requirements; and asphalt used for paving;

**Section 16.1 Definitions**

New Jersey revised section 16.1, Definitions, to add and/or revise terms and their definitions.

EPA evaluated New Jersey's definitions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

**Section 16.2 VOC Stationary Storage Tanks**

New Jersey has reevaluated the level of controls currently required for stationary storage tanks that store VOC by studying controls that have been successfully implemented in other states. The revisions primarily affect those tanks in Range III which is the range that covers larger tanks that store high vapor pressure VOC, such as gasoline, located at refineries, terminals, and pipeline breakout stations. The new requirements can be grouped into five categories: deck fittings and seals, domes, roof landings, degassing and cleaning operations, and inspection and maintenance procedures.

**Deck Fittings and Seals**

New Jersey revised section 16.2(l) to add provisions that require roof penetrations, such as slotted guide poles, access hatches, and adjustable roof legs to have seals, and require upgraded seals for other deck fittings. In addition they provide more stringent rim seal system requirements for existing and new storage tanks in Range III and require roof openings to be maintained in a leak-free condition, as determined by EPA Method 21 (40 CFR part 60, Appendix A).

**Domes**

New Jersey revised section 16.2(l) to require, with some exceptions, that domes be installed on external floating roof tanks that store materials with true vapor pressures greater than three pound per square inch absolute (psia). Any tanks exempted from the requirement of section 16.2(l) must still comply with other requirements in section 16.2 for tanks in existence on May 18, 2009, the day before the

operative date of these provisions. Compliance is required the first time an existing tank is degassed following May 19, 2009, the operative date of these revisions, but no later than May 1, 2020. A new tank is required to comply before the tank is initially filled.

#### Roof Landings

Sections 16.2(n), (o), and (p) are new provisions that New Jersey designed to minimize emissions when a tank goes through a "roof landing cycle." A roof landing cycle is composed of three phases: the removal of all stored liquid VOC (the floating roof is no longer in contact with the stored liquid VOC, but is supported by legs or cables), the idling period (when the tank is waiting to be refilled), and the refilling of the tank. Pursuant to 16.2(p)(1)(i), any floating roof tank existing on May 19, 2009 and not exempt pursuant to 16.2(f)(6), must submit to NJDEP, by December 1, 2009, a complete, written facility-wide tank VOC control plan. Pursuant to 16.2(p)(1)(ii) any new tank, excluding those exempt pursuant to 16.2(f)(6), must submit to NJDEP, by 120 days of installation, a written new or updated facility-wide tank VOC control plan. Pursuant to 16.2(p)(2)(ii), schedules for implementation of emission controls by May 19, 2019 are to be consistent with the facility's schedule for tank removal from service for normal inspection and maintenance and with the facility's schedule for the installation of any new tanks. As an alternative to the implementation schedule of emission controls, storage tanks in Range III that store gasoline may submit an emissions averaging plan pursuant to 16.2(p)2.iii.

#### Degassing and Cleaning Operations

Storage tanks must be periodically cleaned and accumulated sludge removed. Before this can occur, tanks must be degassed (removal of gases that remain after the liquid has been removed). Section 16.2(q) is a new provision that contains requirements for handling the gases and sludge that must be removed when a tank is degassed and cleaned between May 1 and September 30. Compliance with these requirements begins on May 1, 2010. Displaced vapors must be sent to a vapor control system with at least 95 percent control efficiency. Section 16.2(q) also contains approved methods for cleaning the inside of the tank. Sludge from tanks that contained a VOC with a vapor pressure greater than 1.5 psia (pounds per square inch absolute) must be transferred to receiving vessels that are controlled to prevent 95 percent of the emissions from being released to the

atmosphere. Sludge containers must be kept vapor tight and free from liquid leaks.

#### Inspection and Maintenance

Section 16.2(r) is a new provision that applies to VOC storage tanks in Range III and requires that the tanks in this range be inspected by an authorized inspector and the results recorded on an inspection form (contained in Subchapter 16, Appendix II). Section 16.2(r) specifically identifies what must be annually inspected and what must be inspected once a tank is degassed but not less than once every 10 years. Any equipment that does not meet Subchapter 16 requirements must be repaired or replaced.

EPA evaluated the section 16.2 provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### Section 16.7 Surface Coating and Graphic Arts Operations

##### Offset Lithographic Printing and Letterpress Printing

New Jersey revised section 16.7 to address the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (r) and (s) were added and require more stringent emission controls. Where more resource intensive emission controls are necessary or involve modifying the equipment, compliance is required by May 1, 2010. The VOC solvent content of fountain solutions is limited depending on the type of equipment and the limits must be complied with by May 19, 2009. Cleaning materials are restricted to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight with some exceptions after May 19, 2009.

In addition, section 16.7(t) was added and requires, effective May 19, 2009, best management practices, such as, keeping VOC and VOC containing materials in closed containers, ensuring mixing vessels have covers and are kept closed when not adding or removing materials, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. The above changes are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

##### Flexible Package Printing

The New Jersey amendments to section 16.7 address the CTG for Flexible Package Printing. Section

16.7(h)(3) was added and requires more stringent emission controls for rotogravure, sheet-fed gravure, or flexographic printing operations installed or modified on or after May 19, 2010. Section 16.7, Table 7D—Part B contains new maximum allowable VOC content of surface coating formulations (minus water) limits. Section 16.7(t) requires best management practices (see above description). These amendments are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

##### Flat Wood Paneling and Printed Hardwood Coatings

The New Jersey amendments to section 16.7 address the CTG for Flat Wood Paneling and Printed Hardwood Coatings. Section 16.7, Table 7B contains new maximum allowable VOC content per volume of coating (minus water) limits for flat wood paneling and printed hardwood coatings of 2.1 pounds per gallon with a compliance date of May 19, 2009. Section 16.7(t) requires best management practices (see above description).

The amendments to section 16.7 are consistent with the CTG recommendations issued on October 5, 2006. EPA has evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

##### Section 16.11 Asphalt Pavement Production Plants

The New Jersey amendments to section 16.11 clarify that it applies to plants where asphalt pavement is produced. There were no changes to the requirements.

EPA evaluated this provision for consistency with the Act, EPA regulations, and EPA policy and proposes to approve it.

##### Section 16.17 Alternative and Facility-Specific VOC Control Requirements

The New Jersey amendments to section 16.17 limit the duration of an approved VOC alternative control plan to ten years. Section 16.17(c)5 provides that, for control plans issued after May 19, 2009, sources can reapply for a new plan the year before the existing alternate control plan expires. Sources with VOC control plans issued prior to May 19, 2009 must reapply and demonstrate continued justification or comply with the specific Subchapter 16 requirements for that source. If the source does not submit a proposed plan

by August 17, 2009, the existing plan terminates on August 17, 2009 and the source must comply with all applicable provisions of Subchapter 16. All alternative control plans must be submitted by the State to EPA for approval as a revision to the SIP.

EPA has evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### Section 16.19 Application of Cutback and Emulsified Asphalts

The New Jersey amendments to section 16.19 further reduce the amount of VOC that is allowed to be included in cutback asphalt or emulsified asphalt used between April 16 through October 14 to no greater than 0.1 percent VOC by weight or no greater than 6.0 milliliters of oil distillate, in accordance with ASTM Method D244, Standard Test Methods and Practices for Emulsified Asphalts, or AASHTO T 59, Standard Method of Test for Testing Emulsified Asphalts. In addition, it requires cutback asphalt or emulsified asphalt to be stored in sealed containers from April 16 through October 14. Both these requirements are applicable as of April 16, 2009. EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### Other Changes to Subchapter 16

In addition to the above, New Jersey modified Subchapter 16 to make technical and administrative corrections, to delete outdated provisions, such as the repealed Open Market Emissions Trading Program, and to clarify the use of terms in section 16.17.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### *I. What Is EPA's Evaluation of New Jersey's Subchapter 19 "Control and Prohibition of Air Pollution From Oxides of Nitrogen?"*

The following is a summary of EPA's evaluation of New Jersey's April 21, 2009 SIP submittal consisting of new provisions and amendments to existing provisions to Subchapters 19.

New Jersey previously submitted Subchapter 19 as a SIP revision to address the NO<sub>x</sub> RACT requirements, which EPA approved as SIP revisions on January 27, 1997 (62 FR 3804), March 29, 1999 (64 FR 14832) and July 31, 2007 (72 FR 41626). New Jersey also developed a NO<sub>x</sub> Budget Trading Program, which EPA approved as a SIP revision on May 22, 2001 (66 FR 28063),

and the Clean Air Interstate Rule (CAIR) program, which EPA approved as a SIP revision on October 1, 2007 (72 FR 55666). The current submission provides new provisions and amendments that establish more stringent RACT limits for facilities that emit NO<sub>x</sub>. New Jersey revised Subchapter 19 to require owners and operators to implement the following new provisions and amendments to existing provisions:

#### 1. New Provisions

##### Municipal Solid Waste (MSW) Incinerators

Section 19.12 of Subchapter 19 is a new provision that establishes a NO<sub>x</sub> emission limit, compliance monitoring requirements and compliance dates for any size MSW incinerator. The new NO<sub>x</sub> emission limit is 150 parts per million measured on a dry volume basis (ppmvd) at 7% oxygen, averaged over a calendar day is set forth in section 19.12(a). If the NO<sub>x</sub> emission limit cannot be achieved, section 19.12(b) provides that owners/operators of the MSW incinerator can comply by obtaining an alternative maximum allowable NO<sub>x</sub> emission rate pursuant to section 19.13 of Subchapter 19. In accordance with section 19.13(h), any State approved alternative maximum allowable NO<sub>x</sub> emission limit pursuant to 19.13(c) or NO<sub>x</sub> control plan pursuant to 19.13(b) must be submitted by New Jersey to EPA for approval as a SIP revision. Section 19.12(c) provides that compliance with the NO<sub>x</sub> limit is to be demonstrated with a continuous emission monitoring system (CEMS), pursuant to section 19.18 of Subchapter 19. Compliance is due by July 18, 2009 if achieved by optimization of an existing NO<sub>x</sub> air pollution control system (APCS) without modifying the incinerator, however the date is extended to May 1, 2011 if compliance must be achieved by installing a NO<sub>x</sub> APCS or if it is necessary to physically modify the incinerator.

The NO<sub>x</sub> emission limit of 150 ppmvd is more stringent than the federal limits currently in effect for existing large and small MSW incinerators (see 40 CFR Part 62, Subparts FFF and JJJ) and is more stringent than the limits previously approved by EPA as source-specific SIP revisions submitted by New Jersey, pursuant to section 19.13 of Subchapter 19.

EPA supports these new provisions and is proposing to approve them.

##### Sewage Sludge Incinerators

Section 19.28 of Subchapter 19 is a new provision that establishes NO<sub>x</sub> emission limits and compliance requirements for sewage sludge incinerators. Section 19.28(a) provides that the NO<sub>x</sub> emission limit is 7.0 pounds NO<sub>x</sub> per ton of dry sewage sludge for Multiple Hearth type incinerators and 2.5 pounds NO<sub>x</sub> per ton of dry sewage sludge for Fluidized Bed type incinerators, unless the owner/operator is complying with alternative compliance options at section 19.3(f) of Subchapter 19. The NO<sub>x</sub> emission limit of 7.0 pounds NO<sub>x</sub> per ton of dry sewage sludge for Multiple Hearth type incinerators is more stringent than the limits previously approved by EPA as source-specific SIP revisions submitted by New Jersey, pursuant to section 19.13 of Subchapter 19. EPA did not previously receive any source-specific SIP revisions from New Jersey for Fluidized Bed type sewage sludge incinerators.

Pursuant to section 19.15(a) of Subchapter 19, owners/operators of sewage sludge incinerators must demonstrate compliance with either a CEMS or source emission tests. Pursuant to sections 19.15(b) and (c), owners/operators shall meet the following compliance demonstration dates: (1) For a source that was in operation before January 1, 1995, compliance is to be demonstrated at the frequency set forth in the permit for the equipment; and (2) for a source that commenced operation or is altered after January 1, 1995, initial compliance is to be demonstrated within 180 days of when the source commences operation.

Pursuant to section 19.3(f) of Subchapter 19, owners/operators of sewage sludge incinerators may comply by using one of the alternative options listed in 19.3(f)(1)–(4) or a combination of options (1) and (3). The options in section 19.3(f) are: (1) An emissions averaging plan approved by New Jersey pursuant to sections 19.6 and 19.14; (2) an alternative maximum allowable NO<sub>x</sub> emission rate approved by New Jersey pursuant to section 19.13; (3) a plan for seasonal fuel switching approved by New Jersey pursuant to sections 19.14 and 19.20; and (4) a plan for phased compliance through the use of either repowering approved by New Jersey pursuant to section 19.21 or innovative control technology approved by New Jersey pursuant to section 19.23. In accordance with New Jersey's requirements for phased compliance through the use of either repowering or innovative control technology, owners/operators were required to have applied

to implement a plan by February 7, 2006 and to have fully implemented the plans by November 7, 2009. Since the New Jersey compliance deadlines have past, unless already fully implemented by November 7, 2009, these two phased compliance plan options are no longer available as control options.

When Subchapter 19 was last approved, EPA stated that it takes no action to either approve or disapprove the existing provisions for phased compliance using repowering or innovative control technology at sections 19.21 and 19.23, respectively, because they contain a compliance date of November 7, 2009, which was beyond the 1-hour ozone attainment date deadline. See 72 FR 41626, July 31, 2007. EPA continues to take no action on the phased compliance provisions at sections 19.21 and 19.23, which are no longer viable control options, and requests New Jersey to delete this date which has now passed the next time Subchapter 19 is revised.

EPA supports these changes and is proposing to approve this new provision.

#### High Electric Demand Days (HEDD) Electric Generating Units (EGUs)

Sections 19.29 and 30 of Subchapter 19 are new provisions that establish a short term and a long term control strategy, respectively, for limiting NO<sub>x</sub> emissions on "HEDD" and establishing, as applicable, recordkeeping, reporting, and monitoring requirements for EGUs operating on HEDD which are typically days during the summer months when both temperatures and ozone levels can be high. Section 19.1 defines a "HEDD unit" as an EGU, capable of generating 15 megawatts or more, that commenced operation prior to May 1, 2005, and that operated less than or equal to an average of 50 percent of the time during the ozone seasons of 2005 through 2007.<sup>1</sup> Section 19.1 defines an HEDD as a day on which the generating load is forecast by the PJM Interconnection<sup>2</sup> to have a peak value of 52,000 megawatts or higher.

Section 19.29 of Subchapter 19, contains the short term strategy to achieve NO<sub>x</sub> reductions from HEDD units starting on May 19, 2009 through September 30, 2014 thereby providing owners/operators of affected units time to develop and implement the long term strategy pursuant to section 19.30,

which requires compliance with the more stringent NO<sub>x</sub> emission limits at amended sections 19.4 and 19.5 for boilers and combustion turbines, respectively. HEDD units applicable to section 19.29 are old units that typically emit high levels of NO<sub>x</sub> on HEDD.

The short term strategy is based upon a March 2, 2007 Memorandum of Understanding (MOU)<sup>3</sup> signed by New Jersey and the other member states of the Ozone Transport Commission (OTC). This MOU commits New Jersey to reduce NO<sub>x</sub> emissions associated with HEDD units by 19.8 tons per day (TPD) on high electric demand days. Pursuant to section 19.29(b), this short term strategy requires owners/operators of HEDD units to do the following: (1) By June 18, 2009, submit to New Jersey an approvable "2009 Protocol" that defines all of the control measures pursuant to section 19.29(d) needed to achieve its share of the statewide NO<sub>x</sub> emission reductions from HEDD units, on each HEDD day during the period May 19, 2009 through September 30, 2014, as determined by 'Equation 1' of section 19.29(c); (2) provide a demonstration that all the required NO<sub>x</sub> reductions were obtained and include a demonstration in an annual report, pursuant to section 19.29(k); and (3) submit the annual report to New Jersey by January 30th of the following year, pursuant to section 19.29(k).

The short term strategy also defines the applicability of the rule to specific affected sources, provides for recordkeeping and reporting requirements, provides detailed compliance requirements of an approvable 2009 Protocol, and establishes permitting requirements.

It should be noted that pursuant to section 19.29(b)(3) of New Jersey's short term strategy, owners/operators of subject HEDD units may request the State's approval of a phased compliance plan, pursuant to section 19.22, which provides an additional year for compliance with the required NO<sub>x</sub> reductions due to impracticality. During the interim period, section 19.22(g)(4) requires owners/operators of an approved phased compliance plan to control NO<sub>x</sub> emissions either by adjusting the combustion process or seasonally combusting natural gas, pursuant to section 19.20, or implementing other control measures that New Jersey determines are appropriate.

In addition to meeting the NO<sub>x</sub> reductions, (tons/HEDD) as provided in Equation 1, for the period from May 20, 2009 through April 30, 2015 owners/operators of HEDD units that are stationary combustion turbines are also required to meet a specific NO<sub>x</sub> emission limit (expressed as lbs/MMBTU), pursuant to section 19.5, as follows: (1) Table 4 emission limits apply for simple cycle combustion turbines; and (2) Table 5 emission limits apply for combined cycle or regenerative cycle combustion turbines.

New Jersey's long term NO<sub>x</sub> reduction strategy provided in section 19.30 of Subchapter 19 addresses requirements for owners/operators of HEDD units meeting new NO<sub>x</sub> emission limits starting in 2015 and beyond. As stated above, the new more stringent NO<sub>x</sub> emission limits, for boilers and combustion turbines, respectively, are provided in the new amendments in sections 19.4 and 19.5. Owners/operators of HEDD units are required to submit to New Jersey a "2015 HEDD Emission Limit Achievement Plan" ("2015 Plan") by May 1, 2010. The purpose of the 2015 Plan is to document how the owner/operator intends to comply with the 2015 HEDD NO<sub>x</sub> emission limits and to provide a schedule by which the new emission limits will be achieved for each HEDD unit. Owners/operators of HEDD units are required to submit to New Jersey an annual update on the progress of the 2015 Plan for each calendar year from 2010 through 2014. Owners/operators of HEDD units are required to indicate any obstacles that might impede progress in achieving compliance with the applicable 2015 NO<sub>x</sub> emission limit and any steps needed to overcome these obstacles in their annual updates.

EPA supports the new provisions, which address NO<sub>x</sub> reductions from HEDD units and proposes to approve them.

#### 2. Amendments to Existing Provisions Boilers Serving Electric Generating Units (EGUs)

New Jersey revised section 19.4 of Subchapter 19 by lowering the current SIP approved NO<sub>x</sub> emission rates, and by providing new compliance dates, as summarized in Tables 1–3 of Subchapter 19, for boilers serving EGUs. Owners/operators must comply with the new NO<sub>x</sub> emission rates unless they are complying with the alternative compliance options in section 19.3(f)<sup>4</sup>

<sup>1</sup> HEDD units can include some stationary gas turbines and some boilers.

<sup>2</sup> PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, including the State of New Jersey.

<sup>3</sup> "Memorandum of Understanding Among the States of the Ozone Transport Commission Concerning the Incorporation of High Electric Demand Day Emission Reduction Strategies into Ozone Attainment State Implementation Planning".

<sup>4</sup> Whenever EPA refers to section 19.3(f), the reader is referred to the discussion at section I.I.1



or unless otherwise specified in an enforceable agreement with New Jersey.

The NO<sub>x</sub> emission rates in Table 1 of the amendments are the same as the emission rates in the current SIP approved Subchapter 19 and are required to be complied with until December 14, 2012. For coal boilers, the NO<sub>x</sub> emission rates in Tables 2 and 3 are lowered to 1.5 pounds per megawatt hour (lb/MWh), resulting in additional NO<sub>x</sub> reductions ranging from about 75 percent to 85 percent, depending upon the boiler type, and the operative compliance date is December 15, 2012. New Jersey revised the NO<sub>x</sub> emission rates from heat input based rates (pounds per MMBTU) in Table 1 to the production output based rates (lb/MWh) provided in Tables 2 and 3. Output based limits encourage sources to improve plant operating efficiency and encourage pollution prevention measures, such as clean energy supply, which result in reduced fuel consumption and reduced emission of pollutants, including NO<sub>x</sub>.

When calculating a 24-hour NO<sub>x</sub> emission rate for coal combustion at a coal boiler, section 19.4 allows owners/operators to exclude emissions during startup and shutdown under the following restricted conditions: (1) For startup, when the unit is not combusting fossil fuel (coal), for a period not to exceed 8 hours, from initial combustion until the unit combusts coal and is synchronized with a utility electric distribution system; and (2) for shutdown, when the unit is no longer combusting coal and no longer synchronized with a utility electric distribution system. New Jersey provided for this exemption because of technological limitations: Selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) control technologies do not control NO<sub>x</sub> emissions effectively at lower than optimum temperatures that can occur during startup and shutdown periods. EPA is in agreement with New Jersey's exemption for the following reasons: (1) The impact on ambient air quality is minimized by New Jersey's narrowly defined startup and shutdown requirements; (2) the exemption only applies during startup and shutdown periods when coal is not combusted; (3) the NO<sub>x</sub> control strategies have technological limitations during startup and shutdown periods; and (4) New Jersey requires compliance with oil/gas NO<sub>x</sub> emission limits during this startup/shutdown period. This startup/

shutdown exemption is consistent with EPA's guidance as discussed in the TSD.

For oil and gas boilers, the NO<sub>x</sub> emission rates provided in section 19.4, Table 3, expressed as lb/MWh, are more stringent as follows: (1) 2.0 for boilers combusting heavier than No. 2 fuel oil, resulting in additional NO<sub>x</sub> reductions as high as 53 percent, depending upon the boiler type; and (2) 1.0 for boilers combusting either No. 2 and lighter fuel oil or gas only, resulting in additional NO<sub>x</sub> reductions ranging from about 50 percent to 76 percent, depending upon the boiler type.

The operative compliance date for oil and gas fired boilers that are subject to the new NO<sub>x</sub> emission rates in Table 3 is May 1, 2015.

Pursuant to section 19.4(f) of Subchapter 19, owners/operators of coal-fired boilers may request from New Jersey a one-year extension of both the December 15, 2012 emission limit compliance deadline and the June 15, 2013 compliance demonstration deadline required at section 19.4(d)(1). Section 19.4(f) provides the necessary administrative and procedural requirements for owners to submit an extension request and the conditions under which New Jersey will approve the extension request.

EPA supports and proposes to approve the amendments to the current SIP-approved provision as they provide for further NO<sub>x</sub> reductions from boilers serving EGUs.

#### Stationary Combustion Turbines

New Jersey revised section 19.5 of Subchapter 19 to lower the current SIP approved NO<sub>x</sub> emission rates and to provide compliance dates for stationary combustion turbines, as summarized in Tables 4–7 of Subchapter 19. The NO<sub>x</sub> emission rates in Tables 4 through 6 are the same as the emission rates in the current SIP approved Subchapter 19.

Table 7 is applicable to all HEDD unit stationary combustion turbines or stationary combustion turbines capable of generating 15 MW or more that commenced operation on or after May 1, 2005. The NO<sub>x</sub> emission rates in Table 7 are more stringent, by approximately 40 to 54 percent, depending upon the type of turbine and fuel combusted, than the current Table 6 SIP approved NO<sub>x</sub> emission rates. Owners/operators of affected units must comply with the Table 7 NO<sub>x</sub> emission rates on and after May 1, 2015.

EPA supports and proposes to approve the amendments to the current SIP approved provision as they provide for further NO<sub>x</sub> reductions from stationary combustion turbines.

Industrial/Commercial/Institutional (ICI) Boilers and Other Indirect Heat Exchangers (IHEs)

New Jersey revised section 19.7 of Subchapter 19 by lowering the current SIP approved maximum allowable NO<sub>x</sub> emission rates, by providing compliance dates, and by lowering the applicability threshold for ICI boilers and other IHEs. The more stringent requirements at section 19.7 do not apply to ICI boilers and other IHEs at petroleum refineries. Owners/operators must comply with the NO<sub>x</sub> emission rates unless they are complying with the alternative compliance options in section 19.3(f) (see footnote 4).

The NO<sub>x</sub> emission rates in the new Table 9 are more stringent than the current SIP approved rates in Table 8 and are applicable to owners/operators of ICI boilers and IHEs, whether or not the source is located at a facility classified as major for NO<sub>x</sub>, for those sources that are not located at a petroleum refinery. Newly applicable sources are required to be in compliance with the new limits as follows: (1) The applicability threshold is lowered, for sources with a heat input rate expressed as lb/MMBTU, to 25 from 50 lb/MMBTU and (2) the applicability of these provisions is extended to ICI boilers and IHEs not located at a facility classified as major for NO<sub>x</sub>. The new NO<sub>x</sub> emission rates are lowered as much as 77%, depending upon the boiler type and/or fuel combusted. The State has indicated there are no longer any coal-fired boilers in operation. Therefore it has deleted the requirement to comply with these NO<sub>x</sub> emission rates for the source category "coal-fired boilers." For sources with a heat input rate of at least 25 MMBTU/hr but less than 50 MMBTU/hr, compliance with the Table 9 NO<sub>x</sub> emission rates are required on and after (1) May 1, 2011 if compliance is achieved without physically modifying the boiler or IHE and (2) May 1, 2012 for sources that comply by a physical modification. For sources with a heat input rate of at least 50 MMBTU/hr, compliance with the Table 9 NO<sub>x</sub> emission rates is required on and after (1) May 1, 2010 if compliance is achieved without physically modifying the boiler or IHE and (2) May 1, 2011 for sources that comply by a physical modification.

For ICI boilers and IHEs located at petroleum refineries, the current SIP approved NO<sub>x</sub> emission rates in Table 8 are still applicable.

EPA supports and proposes to approve the amendments to the current SIP-approved provision as the amendments provide for further NO<sub>x</sub>

of this rulemaking relating to sewage sludge incinerators.



reductions from ICI boilers and other IHEs.

#### Asphalt Pavement Production Plants

New Jersey revised section 19.9 of Subchapter 19 by lowering the current SIP approved maximum allowable NO<sub>x</sub> emission limit for dryers at asphalt production plants, by providing new compliance dates, and by requiring implementation and recordkeeping associated with new best management practices. The NO<sub>x</sub> emission limits are lowered, in the range of 37 to 67 percent, from 200 ppmvd, as measured at 7 percent oxygen, to more stringent limits depending upon the fuel combusted in the dryer. The new NO<sub>x</sub> emission limits are as follows: (1) 75 ppmvd for natural gas combustion; (2) 100 ppmvd for No. 2 fuel oil combustion; and (3) 125 ppmvd for No. 4 fuel oil, heavier fuel oil, on-specification used oil or any mixture of these three oils. Owners/operators must comply with the NO<sub>x</sub> emission limits unless they are complying with the alternative compliance options in section 19.3(f) (see footnote 4). In addition, owners/operators must annually adjust the combustion process of the dryer pursuant to section 19.16 of Subchapter 19.

Owners/operators of an asphalt pavement production plant that are complying without physically modifying the dryer must be in compliance with the new NO<sub>x</sub> emission limits by the following dates: (1) By May 1, 2011, for sources with a heat input rate of less than 100 MMBTU/hr and (2) by May 1, 2010, for sources with a heat input rate of at least 100 MMBTU/hr. For owners/operators of sources that must make physical modifications to comply, the compliance date is extended one year for each of the scenarios above.

EPA supports and proposes to approve the amendments to the current SIP approved provision that addresses NO<sub>x</sub> reductions from asphalt pavement production plants.

#### Glass Manufacturing Furnaces

New Jersey revised section 19.10 of Subchapter 19 by lowering the current SIP approved NO<sub>x</sub> emission limits by approximately 27 to 64 percent, by adding new applicable source categories, and by providing compliance dates for glass manufacturing furnaces having the potential to emit more than 10 tons of NO<sub>x</sub> per year. The new NO<sub>x</sub> emission limits for glass manufacturing furnaces subject to the provisions are either 4.0 or 9.2 tons NO<sub>x</sub> per ton of glass removed from the furnace, depending upon the type of glass

produced and the production rate of the glass furnace. The amendments applicable to glass manufacturing furnaces that produce pressed glass, blown glass, fiberglass and flat glass are now regulated by section 19.10.

Pursuant to section 19.10(f), in lieu of meeting the NO<sub>x</sub> emission limits at sections 19.10(a) and (b), owners/operators of glass manufacturing furnaces may comply by using the alternative compliance options at section 19.10(f), which parallel those for sewage sludge incinerators at 19.3(f) (see footnote 4), except that the alternative compliance option for innovative control technology and the phased compliance by repowering are not allowed by New Jersey.

Owners/operators of glass manufacturing furnaces are required to be in compliance with the new NO<sub>x</sub> emission limits on and after May 1, 2010. Based on economic considerations, compliance with the amendments is required on the first day of startup after rebricking of the furnace occurs. Since economic feasibility is one of the RACT requirements, New Jersey's compliance requirement is acceptable to EPA.

EPA supports and proposes to approve the amendments to the current SIP approved provision that addresses NO<sub>x</sub> reductions from glass manufacturing furnaces.

#### Alternative and Facility-Specific NO<sub>x</sub> Emission Limits (AELs and FSELs)

Section 19.13 of Subchapter 19 establishes a procedure for making case-by-case RACT determinations for facilities classified as major for NO<sub>x</sub>, for an item of equipment, or for a source operation. Owners/operators of major NO<sub>x</sub> facilities with emission sources having a potential to emit of more than 10 tons of NO<sub>x</sub> per year, where no previous presumptive NO<sub>x</sub> emission limit has been established in Subchapter 19, are required to apply to New Jersey for a facility-specific emission limit (FSEL). Where a presumptive NO<sub>x</sub> emission limit exists in Subchapter 19 and owners/operators determine that the presumptive NO<sub>x</sub> limit cannot be met by the source, the owners/operators can apply to New Jersey, pursuant to the procedures in section 19.13, for an alternative emission limit (AEL). FSELs and AELs are determined on a case-by-case basis. Pursuant to section 19.13(h), any FSEL or AEL approved by New Jersey must be submitted by the State to EPA for approval as a revision to the SIP. If EPA denies the approval of the proposed NO<sub>x</sub> plan as a revision to the SIP, section 19.13(l) provides that New

Jersey will revoke its approval of the plan.

Section 19.13 is amended by requiring owners/operators of each facility with either an FSEL or an AEL that was issued by New Jersey before May 1, 2005 to submit a new NO<sub>x</sub> control plan by August 17, 2009 unless a 90-day extension is requested and approved by the State. Pursuant to section 19.13(b)(1), any FSEL approved by New Jersey after May 19, 2009 will not have an expiration date unless there is a modification, alteration or reconstruction of the source, for which the State's approval of a new FSEL is required. Pursuant to section 19.13(b)(2) any AEL approved by New Jersey will have a term limit of 10 years. An approval of an AEL is void upon alteration of the equipment or source operation, unless New Jersey determines that the alteration does not materially affect the basis of the original approval or the source, prior to the alteration, applies for and obtains a revised AEL (see sections 19.13(b)(6) and 19.13(k)). New Jersey made these amendments after its review of existing FSELs and AELs many of which were approved as long ago as 1997. In many cases, the State determined that control technologies have advanced sufficiently since that time, warranting reevaluations of these case-by-case determinations.

EPA supports and proposes to approve the amendments to the current SIP approved provision as they will lead to potential NO<sub>x</sub> reductions from specific-sources.

#### 3. Additional Amendments to Subchapter 19

New Jersey adopted a number of other amendments since EPA last approved amendments to Subchapter 19 (72 FR 41626, July 31, 2007). Among other things, these amendments (1) Revised terms and definitions that do not change the meaning or stringency of the provisions; (2) revised section 19.2 to expand the list of the following applicable source categories: Certain glass manufacturing furnaces, any municipal solid waste incinerator, and any sewage sludge incinerator; (3) revised section 19.3 to exclude owners/operators of HEDD units from using alternative compliance options at section 19.3(f), beginning on May 1, 2015; and (4) deleted the entire provision at section 19.27 that referred to New Jersey's now defunct Open Market Trading Program at Subchapter 30 that was repealed in 2004.

#### 4. Compliance Dates

New Jersey amended Subchapter 19 by including new provisions and amendments to previously approved SIP provisions that result in more stringent NO<sub>x</sub> emission limitations that will lead to additional reductions in NO<sub>x</sub> emissions from the affected major stationary combustion sources.

New Jersey uses the emission benefits from the new provisions and amendments to Subchapter 19 in a variety of ways in the SIP. Some are used to meet reasonable further progress goals, others as a contingency measure should an area fail to attain the 1997 ozone standard, some to support the "weight of evidence" arguments concerning attainment of the 1997 ozone standard, and others that will be used to help to attain the new 2008 ozone standard (currently under reconsideration) that New Jersey anticipates will replace the 1997 ozone standard. In addition, New Jersey was seeking to fulfill the section 182(b)(2) and section 172(c)(1) requirements for RACT as applied to both the 1997 and 2008 ozone standards in setting the emission standards and compliance due dates.

Emission reductions required by sections 182(b)(2) and 172(c)(1) of the Act, used to fulfill in the 1997 ozone SIP, are required to be achieved by May 2009. Sources with compliance periods that go beyond May 2009 are used as contingency measures or towards meeting RACT for the 2008 ozone standard. In determining a compliance date for a level of control that can be considered RACT, the time necessary to make the required modifications and the cost of modifications were taken into consideration. For example, rebricking of a glass manufacturing furnace, which usually accompanies new emission controls, is a significant factor in evaluating both time and expenses necessary for the project. Requiring a "rebricking" of a furnace before it is physically necessary would constitute a significant additional cost that could result in the new emission controls being considered economically unreasonable.

The compliance dates included in Subchapter 19's provisions are as expeditious as practical considering the level of the required new controls. Consistent with the Phase 2 Rule, any emission reduction used in the 1997 ozone SIP is required to occur no later than the start of the 2009 ozone season, which is the time by which a state must demonstrate that it achieved the necessary emission reductions to meet the June 15, 2010 attainment date for

areas that are classified as a moderate nonattainment area for the 8-hour ozone standard.

Based on preliminary air quality data monitored for the 3-year period from 2007–2009, the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE nonattainment area is eligible for a one year extension of its attainment date to June 15, 2011 because of the clean air quality data monitored for 2009. Similarly, the New York-New Jersey-Long Island, NY–NJ–CT nonattainment area is eligible for a clean data determination based on three years of clean data. In addition, consistent with EPA's last approval of Subchapter 19 (see 72 FR 41626, July 31, 2007), EPA continues to take no further action to approve or disapprove the existing provisions for phased compliance by repowering and innovative control technology at sections 19.21 and 19.23. These provisions still include the compliance date of November 7, 2009, which is beyond the November 15, 2007 attainment deadline for the NY–NJ–CT 1-hour ozone standard. For this reason, as indicated in EPA's July 2007 approval of Subchapter 19, New Jersey should delete the reference to the November 7, 2009 compliance date for these two phased compliance plans.

#### 5. Other Comments

As stated above, owners/operators of HEDD units subject to New Jersey's short term strategy at section 19.29 may apply to the State for approval of a phased compliance plan pursuant to section 19.22 that allows for an additional year for compliance with the required NO<sub>x</sub> reductions due to demonstrated impracticality. However, at section 19.1, the definition of "interim period" allows a source an additional two years instead of one year from May 19, 2009. As discussed with the State, New Jersey should revise section 19.1 to make it consistent with section 19.22.

#### 6. NO<sub>x</sub> RACT

EPA originally approved Subchapter 19 into the SIP on May 31, 1972. 37 FR 10842, 10880 and 40 CFR 52.1576. This rule was adopted because the Clean Air Act requires states to submit to EPA a plan that provides for implementation, maintenance and enforcement of a degree of nitrogen oxide reduction that is necessary to achieve attainment with the NAAQS. New Jersey developed, adopted and submitted to EPA, for approval into the SIP, Subchapter 19, a plan for the application of reasonably available control technology to reduce nitrogen oxide emissions from stationary sources.

Pursuant to 40 CFR 81.331, New Jersey-NO<sub>2</sub> table, all areas in New Jersey are classified as "Cannot be classified or better than national standards."

New Jersey submitted previous versions of Subchapter 19 as SIP revisions which EPA approved as SIP revisions on January 27, 1997 (62 FR 3804), March 29, 1999 (64 FR 14832) and July 31, 2007 (72 FR 41626). New Jersey also developed, adopted and submitted to EPA a NO<sub>x</sub> Budget Trading Program and a Clean Air Interstate Rule (CAIR) program which EPA approved as SIP revisions on May 22, 2001 (66 FR 28063) and October 1, 2007 (72 FR 55666), respectively. The current submission provides new provisions and amendments that establish more stringent RACT limits for stationary sources that emit NO<sub>x</sub>.

Given the previously approved versions of Subchapter 19 and the most recent version of Subchapter 19 that EPA is proposing to approve in this action, EPA has determined that New Jersey has met the requirement to adopt NO<sub>x</sub> RACT. Therefore, the 40 CFR 52.1576 finding relating to the New Jersey SIP not providing for NO<sub>x</sub> RACT has been satisfied and this finding should be removed.

#### *J. What Is EPA's Evaluation of New Jersey's Subchapter 21—"Emission Statements?"*

This rule requires industrial facilities to report annually detailed information on specified air pollutant emissions and process-related data to New Jersey, if the facility emits or has the potential to emit air pollutants above a specified emissions threshold. New Jersey previously submitted Subchapter 21 (state effective date February 18, 2003) as a SIP revision and EPA approved it on August 2, 2004 (69 FR 46106). In this action, EPA is acting on two revisions to Subchapter 21, one adopted on October 30, 2008 with an operative date of December 29, 2008 and the second adopted on March 20, 2009 with an operative date of May 19, 2009.

The October 30, 2008 revision incorporated changes to the definition of volatile organic compounds (VOC) in section 21.1. The new definition excludes tertiary butyl acetate or t-butyl acetate (TBAC) from VOC emissions limitations or VOC content requirements, but requires that TBAC be considered a VOC for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements. EPA evaluated New Jersey's revised VOC definition for consistency with the Act, EPA regulations, and EPA policy. The revised definition of VOC as used in the

above rules is consistent with EPA's definition in 40 CFR 51.100(s). EPA is proposing to approve this revision.

The March 20, 2009 version incorporates changes to sections 21.1 and 21.5 that require owners/operators of VOC stationary storage tanks with floating roofs to provide additional emission information concerning roof landing operations.

EPA evaluated New Jersey's revisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

## II. Conclusion

Both Subchapters 16 and 19 contain provisions which require case-by-case RACT determinations to be submitted as SIP revisions. These case-by-case RACT determinations are needed to fulfill the RACT requirement of section 182 of the Act. The State is in the process of evaluating these determinations for approval and therefore has not yet submitted them as SIP revisions. EPA would normally propose to conditionally approve this SIP revision as meeting the RACT requirement pending New Jersey's submission and EPA's approval of the case-by-case RACT determinations. However, based on information provided by New Jersey, the quantity of NO<sub>x</sub> and VOC emissions relevant to these determinations is below 5 percent of the stationary source baseline of emissions which is what EPA considers to be de minimis. Therefore, pursuant to EPA guidance,<sup>5</sup> EPA is proposing to approve Subchapters 16 and 19. The remaining element needed to fulfill the VOC RACT requirement is New Jersey's Subchapter 26, which New Jersey submitted to EPA on April 9, 2009, as a SIP revision and which EPA is currently reviewing.

Therefore, EPA evaluated New Jersey's submittal for consistency with the Act, EPA regulations and policy. The proposed new control measures will strengthen the SIP by providing additional NO<sub>x</sub>, SO<sub>2</sub>, fine particulate, and VOC emission reductions. Accordingly, EPA is proposing to approve the revisions to Subchapters 4, 10, 16, 19 and related revisions to Subchapter 21, as adopted on March 20, 2009, except that EPA is continuing to not act, for the reasons explained above in this rulemaking, on the phased compliance plans by repowering and innovative control technology in sections 19.21 and 19.23, respectively. In addition, EPA is proposing to delete

40 CFR 52.1576, relating to a prior finding that NO<sub>x</sub> RACT was not included in the New Jersey SIP.

## III. 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.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

**Dated:** April 14, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2010-9463 Filed 4-22-10; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Service

#### 42 CFR Part 416

[CMS-3217-P]

RIN 0938-AP93

### Medicare Program; Ambulatory Surgical Centers, Conditions for Coverage

**AGENCY:** Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise one of the existing conditions for coverage (CfC) that ambulatory surgical centers (ASCs) must meet in order to participate in the Medicare program. The proposed revision would modify the current CfC for patient rights to include an exception that would allow an ASC to provide patients or the patients' representative or surrogate with required patient rights information on the day of the procedure when the procedure must, to safeguard the health of the patient, be performed on the same day as the physician's referral. In addition, we are proposing some other minor changes to the CfC for patient right requirements.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. EST on June 22, 2010.

**ADDRESSES:** In commenting, please refer to file code CMS-3217-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

<sup>5</sup> "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements," November 7, 1996.