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290 Broadway 20th Floor, New York,
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New Jersey Department of
Environmental Protection, Office of
Air Quality Management, Bureau of
Air Quality Planning, 401 East State
Street, CN418, Trenton, New Jersey
08625.

FOR FURTHER INFORMATION CONTACT:
Demian Ellis, Air Programs Branch,
Environmental Protection Agency, 290
Broadway 20th Floor, New York, New
York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION: For
additional information see the direct
final rule which is published in the
rules section of this Federal Register.

Dated: September 18, 1995.

William J. Muszynski,
Deputy Regional Administrator.

[FR Doc. 95-24462 Filed 9-29-95; 8:45 am]

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40 CFR Part 52

[Region II Docket No. 145; NJ16-1-6470,
FRL-5309-3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for the State of New Jersey

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of
revisions to the State Implementation
Plan (SIP) for ozone submitted by the
State of New Jersey. This portion of the
implementation plan was submitted by
the State to satisfy Clean Air Act (the
Act) requirements for adoption of rules
for the application of reasonably
available control technology (RACT) for
oxides of nitrogen (NO_x) in the entire
State. The Act requires implementation
of NO_x RACT at major stationary
sources of NO_x emissions in the State of
New Jersey by May 31, 1995.

DATES: Comments must be received on
or before November 1, 1995.

ADDRESSES: All comments should be
addressed to: William S. Baker, Chief,
Air Programs Branch, Environmental
Protection Agency, Region II Office, 290
Broadway, Twentieth Floor, New York,
New York 10007-1866.

Copies of the state submittal and other
information are available at the
following addresses for inspection
during normal business hours:

Environmental Protection Agency,
Region II Office, Air Programs Branch,

290 Broadway, Twentieth floor, New
York, New York 10007-1866.

New Jersey Department of
Environmental Protection, Office of Air
Quality Management, Bureau of Air
Quality Planning, 401 East State Street,
CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Ted
Gardella, Air Programs Branch,
Environmental Protection Agency, 290
Broadway, Twentieth floor, New York,
New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements
for the reduction of NO_x emissions
through RACT are set out in Section
182(f) of the Act. Section 182(f)
requirements are described by EPA in a
notice, "State Implementation Plans;
Nitrogen Oxides Supplement to the
General Preamble; Clean Air Act
Amendments of 1990 Implementation of
Title I; Proposed Rule," published
November 25, 1992 (57 FR 55620). The
November 25, 1992 notice should be
referred to for detailed information on
the NO_x requirements. Additional
guidance memoranda which have been
released subsequent to the NO_x
Supplement should also be referred to.

The EPA has defined RACT as the
lowest emission limitation that a
particular source is capable of meeting
by the application of control technology
that is reasonably available considering
technological and economic feasibility
(44 FR 53762; September 17, 1979).

Section 182(f) of the Act requires
states within moderate or above ozone
nonattainment areas or the ozone
transport region to apply the same
requirements to major stationary sources
of NO_x ("major" as defined in Section
302 and Section 182(c), (d), and (e)) as
are applied to major stationary sources
of volatile organic compounds (VOCs).
For more information on what
constitutes a major source, see Section
2 of the NO_x Supplement to the General
Preamble.

Section 182(b)(2) requires submittal of
RACT rules for major stationary sources
of VOC emissions (not covered by a pre-
enactment control technique guidelines
(CTG) document or a post-enactment
CTG document) by November 15, 1992.
There were no NO_x CTGs issued before
enactment and EPA has not issued a
CTG document for any NO_x sources
since enactment. States, in their RACT
rules, are expected to require final
installation of the actual NO_x controls
by May 31, 1995 from those sources for
which installation by that date is
practicable.

States within the Northeast ozone
transport region established by section
184(a) should have revised their SIPs to
include the RACT measures by
November 15, 1992. Because states in a
transport region are generally subject to
at least the moderate area requirements,
EPA believes that the schedule for
implementing these RACT rules in the
ozone transport region should be
consistent with the requirements of
Section 182(b)(2) and will be expected
to require final installation of the actual
NO_x controls by May 31, 1995 on those
sources for which installation by that
date is practicable. Based on Section
182(f), New Jersey is required to apply
the NO_x RACT requirements Statewide.

II. State Submittal

On November 15, 1993 New Jersey
submitted to EPA as a revision to the
SIP, Subchapter 19, "Control and
Prohibition of Air Pollution From
Oxides of Nitrogen" of Chapter 27, Title
7 of the New Jersey Administrative Code
with an effective date of December 20,
1993. Subchapter 19 contains the NO_x
RACT requirements for the State. New
Jersey held public hearings on
Subchapter 19 in March 1993 and it was
adopted on November 15, 1993. EPA
reviewed the plan to determine
completeness in accordance with
criteria set out at 40 CFR 51. The
submittal was found to be
administratively and technically
complete, and a letter dated December
29, 1993 was forwarded to the
Commissioner indicating the
completeness of the submittal and the
next steps to be taken in the review
process.

It is important to note that New Jersey
is a member of the Northeast States for
Coordinated Air Use Management
(NESCAUM) and the Ozone Transport
Commission (OTC), which seek to
develop a consistent NO_x reduction
strategy for ozone attainment in the
Northeast. New Jersey's NO_x RACT plan
is consistent with the recommendations
of these groups, which are generally
more stringent than EPA requirements.

For a more detailed discussion of New
Jersey's submittal and EPA's proposed
action on the submittal, the reader
should refer to the Technical Support
Document developed as part of this
proposed action and found at the
previously mentioned addresses.

III. Analysis of New Jersey's SIP Submission

A. RACT Determination and Implementation

1. Utility Boilers

Section 19.4 of Subchapter 19 specifies the emission limitations for utility boilers and three alternative ways for utility boilers to comply: averaging, fuel switching, and repowering. Maximum allowable NO_x emission rates, expressed as pounds NO_x per million BTUs (lb. NO_x/MM BTU), range from 0.2 to 1.0 depending on the type of boiler and the type of fuel. Section 19.4 also requires utility boilers to install a continuous emission monitoring system. The emission limits specified by New Jersey are consistent with those recommended by the EPA in the NO_x Supplement. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

New Jersey's provisions allow utilities to comply with the NO_x RACT requirements by using an averaging plan throughout the State including areas with different nonattainment classifications. This alternative is further reviewed in Part III.A.3. of this document.

New Jersey's fuel switching provision is consistent with EPA guidance which basically states that annual emissions of NO_x must be less than or equal to annual emissions that would result from continuous compliance with presumptive NO_x RACT.

New Jersey's repowering provision meets all of the requirements in EPA's guidance. Repowering is simply the replacement of the steam generator in a steam generating unit. New Jersey's provision requires interim RACT to begin by May 1, 1995 and for the repower to be completed by May 15, 1999. New Jersey defines interim RACT as annual adjustments to the combustion process.

2. Stationary Gas Turbines

Section 19.5 specifies the maximum allowable NO_x emission rates (lb. NO_x/MM BTU) ranging from 0.15 to 0.4 depending on the type of turbine and the type of fuel. Alternatively, compliance can be met through an averaging plan or where it can be shown that there is an insufficient supply of water to the turbine and that there is no commercially available dry low-NO_x combustor suitable. In this latter case, the owner/operator must obtain approval of this waiver from New Jersey

in accordance with Section 19.14 and in addition, the combustion process of the turbine must be annually adjusted.

New Jersey's emission limitations are consistent with EPA's general guidance. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

3. Emissions Averaging

Section 19.6 allows sources to comply with the regulation with an averaging plan. Any person owning or operating at least two items of equipment or source operations may request the Department's approval of an averaging plan. The person developing an averaging plan must identify the equipment and source operations to be included in the plan. The averaging units included in the plan may be located at one or more sites throughout the State, but must be owned and operated by the same person. The central part of the application for an averaging plan is the demonstration that if all averaging units included in the designated set are operating at maximum design capacity, their total emissions will be no greater than the total emissions which would be allowed from all of the averaging units if they were subject to the 'presumptive' RACT emission limits.

This averaging provision is not intended to be a generic trading rule covering all pollutants but is a limited trading rule for meeting NO_x RACT requirements. The New Jersey regulation is limited in scope, time, and types of sources which can trade and is intended to be an interim step in achieving future ozone attainment. New Jersey's averaging provision met the general EPA guidance (NO_x Preamble) when these rules were proposed and adopted by the State. New Jersey, in consultation with the OTC states and EPA, is currently developing future trading rules which will have broader applicability. New Jersey's averaging provision is satisfactory in that it meets EPA's policy that was in existence at the time it was adopted by the State, however there are some differences from current EPA trading policy. These differences include: (1) definition of a violation, (2) improved audit procedures, (3) a reconciliation procedure, (4) specification of baseline emissions, and (5) the effects on credits of newly adopted rules. The State's revisions will address these areas and strengthen the NO_x RACT regulations.

New Jersey's averaging plan is consistent with EPA's general guidance (NO_x Preamble). The averaging plan is

enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

4. Non-Utility Boilers

Section 19.7 specifies the requirements for non-utility boilers. The control strategy depends on the maximum gross heat input rate of the non-utility boiler, the type of boiler and the type of fuel used. Smaller boilers are required to annually adjust the combustion process to minimize NO_x emissions, while the larger size boilers must meet emission limits (lb. NO_x/MM BTU) ranging from 0.1 to 1.0. Also, any non-utility boilers with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system.

The emission limits specified by New Jersey are consistent with those recommended by the EPA in the NO_x Supplement. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

5. Stationary Internal Combustion Engines

Section 19.8 establishes NO_x emission limits for stationary internal combustion engines. The emission limitations, expressed as grams NO_x per horsepower-hour, range from 1.5 to 8.0 depending on the type of engine and the type of fuel used.

New Jersey's emission limits are consistent with EPA's general guidance and with those suggested by NESCAUM. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

6. Asphalt Plants

Section 19.9 establishes NO_x emission limits for asphalt plants depending on the type of plant. The emission limit for these sources is 200 parts per million (dry, volume basis) at seven percent oxygen content. In addition to establishing emission limits, the regulation requires the burner of an aggregate dryer to be adjusted annually to reduce emissions of all pollutants.

New Jersey's emission limitations are consistent with EPA's general guidance. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

7. Glass Manufacturing Furnaces

Section 19.10 establishes NO_x emission limits for glass manufacturing furnaces. The limitations depend on the type of glass manufactured by the furnace.

The emission limits, expressed as pounds NO_x per ton of glass removal from the furnace, for commercial container and specialty container glass manufacturing are 5.5 and 11.0 respectively. In the case of borosilicate recipe glass manufacturing furnaces, a baseline NO_x emission rate must be determined by January 1, 1994 and a plan must be submitted by July 1, 1994 explaining how those baseline emissions will be reduced by 30 percent. The furnace must then implement the plan and reduce its emissions accordingly. In addition, the owner or operator of a glass manufacturing furnace must annually adjust the combustion process of the furnace beginning in May 1994.

The Department has determined that glass furnaces will become subject to the specific emission limitations on May 1, 1997, unless the furnace is 'rebricked' before that date, in which case the furnace becomes subject to the emission limitations upon the date the rebricking is completed.

EPA accepts the technical and economic rationale presented by New Jersey in their proposed rule for the emission limits as adopted. EPA's policy allows states to extend the repowering guidance to other source categories. New Jersey's rebricking provisions meet all of the requirements in EPA's guidance. New Jersey's provision requires interim RACT to begin on May 1, 1994 and to rebrick and comply with the emission limits by May 1, 1997 or the first date after rebricking is completed, whichever is earlier. New Jersey defines interim RACT as annual adjustments to the combustion process.

New Jersey's emission limitations are consistent with EPA's general guidance and therefore, acceptable to the Agency. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

8. Facility-Specific NO_x Emission Limits

Section 19.13 establishes a procedure for a case-by-case determination of what represents RACT for a particular facility, item of equipment or source operation. This procedure is applicable in two situations: (1) if a major NO_x facility contains any source operation or item of equipment not listed in 19.2, or (2) if the

owner or operator of a source operation or item of equipment that is listed in 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure entails the owners and/or operators of the effected facility to propose a NO_x control plan or request for an alternative maximum allowable emission rate. The owners/operator are to include a technical and economic feasibility analysis of the possible alternative control measures. For each case, the regulations provide for the Department to establish emission limits based upon a RACT determination specific to the facility in question. The resulting control plan or alternate maximum allowable emission rate would be submitted for approval as a SIP revision.

Section 19.13(l) identifies the reasons why the State "may" revoke an approval of a NO_x control plan. One reason would be an EPA disapproval of the plan after EPA rulemaking action. The State indicates that "may" does not apply to EPA disapprovals and that in a forthcoming amendment to Subchapter 19, New Jersey will clarify this. They will revise Sections 19.13(l)(3) and 19.13(h) to say that upon EPA disapproval of a specific NO_x plan, New Jersey will revoke the plan. EPA is proposing to approve this provision because the New Jersey explanation is acceptable and, regardless, EPA has adequate authority under the Act to require the state to correct any EPA identified deficiencies.

For sources not subject to specific emission limitations or work practice standards, Section 19.13 provides a procedure and schedule which must be followed in order to comply with Subchapter 19. Should a source not comply with this procedure it would constitute a violation of Subchapter 19 and would subject the source owner or operator to civil and applicable criminal penalties. EPA believes this is sufficient to insure that sources comply and should EPA have to take enforcement action, it could use the same provisions to obtain compliance.

9. Exemptions

Section 19.2 contains provisions to exempt equipment and source operations. The following summarizes these exemptions:

1. Emergency generators which operate less than 500 hours annually and have a potential to emit less than 25 tons of NO_x. This exemption provision is consistent with the Act since all sources with a potential to emit less than 25 tons per year of NO_x are not subject to NO_x emission limitations.

2. Equipment or source operations where the EPA Administrator determines that the

net air quality benefits are greater in the absence of NO_x reductions. This provision conforms to Section 182(f) of the Act providing for this NO_x RACT exemption.

3. NO_x sources with a potential to emit less than 25 tons per year and with the potential to emit less than 137 pounds per day during the ozone season. This provision is consistent with the Act as indicated in the first exemption above.

10. Other Provisions

The following are administrative and procedural provisions to Subchapter 19 which were reviewed by EPA: definitions; general provisions; procedures for obtaining approvals and demonstrating compliance; requirements for adjusting the combustion process; emission testing, monitoring, and recordkeeping; and civil penalties. EPA has evaluated these provisions in Subchapter 19 for consistency with EPA policy and has determined that they meet the requirements and are therefore acceptable to the Agency.

IV. Summary

The EPA is proposing full approval of Subchapter 19, "Control and Prohibition of Air Pollution From Oxides of Nitrogen" submitted by the State of New Jersey on November 15, 1993 for the marginal, moderate, and severe ozone nonattainment areas. New Jersey has applied Subchapter 19 to the entire State.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under Section 182(f) of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated annual costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone,

Reporting and recordkeeping requirements.

Authority: 42 U.S.C 7401-7671q.

Dated: September 15, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95-24451 Filed 9-29-95; 8:45 am]

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40 CFR Parts 52 and 81

[LA-15-1-6073b; FRL-5307-5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plan for the New Orleans Consolidated Metropolitan Statistical Area (CMSA); Redesignation of the New Orleans CMSA to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On October 15, 1994, the State of Louisiana submitted a revised maintenance plan and request to redesignate the New Orleans CMSA ozone nonattainment area to attainment. The New Orleans CMSA is comprised of six parishes: Jefferson, Orleans, St. Charles, St. Bernard, St. John the Baptist, and St. Tammany. Maintenance and contingency plans are not included in the action for the parishes of St. John the Baptist and St. Tammany. St. John the Baptist Parish was previously redesignated to attainment, and St. Tammany Parish has never been designated as nonattainment.

This maintenance plan and redesignation request was initially submitted to the EPA on April 23, 1993. Although the EPA deemed this initial submittal complete on September 10, 1993, certain approvability issues existed. The State of Louisiana addressed these approvability issues and has revised its submissions. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Louisiana's redesignation request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is approving the 1990 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

In the Final Rules Section of this Federal Register, the EPA is approving this redesignation request as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be postmarked by November 1, 1995. If no adverse comments are received, then the direct final rule will be effective on December 1, 1995.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Air Planning Section (6PD-L), EPA Region 6, telephone (214) 665-7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National Parks, Reporting