

Proposed Rules

Federal Register

Vol. 72, No. 49

Wednesday, March 14, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA-R02-OAR-2006-0162; FRL-8287-4]

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) for ozone to incorporate state-adopted amendments to Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen" and related amendments to Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds." The amendments relate to the control of oxides of nitrogen (NO_x) emissions from stationary industrial sources. This SIP revision consists of control measures needed to meet the shortfall in emission reductions in New Jersey's 1-hour ozone attainment demonstration SIP as identified by EPA.

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 required by the Clean Air Act (the Act).

DATES: Comments must be received on or before April 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2006-0162, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: Werner.Raymond@epa.gov.
- *Fax*: 212-637-3901.
- *Mail*: Raymond Werner, Chief, Air Programs Branch, U.S. Environmental

Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

• *Hand Delivery*: Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Hand 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-2006-0162. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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* or e-mail. The *www.regulations.gov* website 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 *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>.

FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella
gardella.anthony@epa.gov at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2 Office, 290

Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-4249, fax number (212) 637-3901.

Copies of the New Jersey submittals are available at the following addresses for inspection during normal business hours:

Air Programs Branch, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

SUPPLEMENTARY INFORMATION: For detailed information on New Jersey's SIP revisions see the Technical Support Document (TSD), prepared in support of today's proposed action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section or it can be viewed at *www.regulations.gov*.

The following table of contents describes the format for this notice:

- I. EPA's Proposed Action
 - A. What Action Is EPA Proposing Today?
 - B. Why Is EPA Proposing This Action?
 - C. What Are the Clean Air Act Requirements for NO_x RACT?
 - D. What Were the Clean Air Act Requirements for Attainment of the 1-Hour Ozone Standard?
 - E. When Was New Jersey's Additional NO_x RACT Requirement Proposed and Adopted?
 - F. What Is EPA's Evaluation of New Jersey's Submittal?
- II. Conclusion
- III. Statutory and Executive Order Reviews

I. EPA's Proposed Action

A. What Action Is EPA Proposing Today?

EPA proposes to act on a New Jersey submission that includes a new rule and amendments to Subchapter 19 "Control and Prohibition of Air Pollution from Oxides of Nitrogen"; Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds"; Subchapter 8 "Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit)"; and Subchapter 22 "Operating Permits."

Except for certain Open Market Emissions Trading (OMET) Program provisions in Subchapters 8, 16, and 19,

and compliance dates beyond November 15, 2007 for repowering and innovative control technology, as discussed later in this notice, EPA proposes to approve, as revisions to the New Jersey ozone SIP, the state-adopted amendments to Subchapter 19 and Subchapter 16, each adopted by New Jersey on September 8, 2005, and submitted to EPA on December 16, 2005. EPA is currently reviewing past amendments to Subchapter 8 and will address the approvability of all Subchapter 8 amendments at the same time in a future action. Subchapter 22 is New Jersey's operating permit rule that was separately approved under title V of the Clean Air Act and therefore Subchapter 22 should not have been submitted as a SIP revision. EPA has reviewed the new amendments to Subchapter 22 and will formally respond to New Jersey with a letter.

New Jersey amended Subchapter 19 to reduce additional emissions of NO_x in response to emission reduction shortfalls, identified by EPA (64 FR 70380, December 16, 1999), for attainment of New Jersey's 1-hour ozone standard. New Jersey amended Subchapter 16 to be consistent with amendments to Subchapter 19. Except for certain provisions discussed later in this notice, EPA proposes that New Jersey's state-adopted Subchapters 16 and 19 are fully approvable as a SIP-strengthening measure for New Jersey's ground level ozone SIP. The amendments to Subchapters 16 and 19 in New Jersey's submittal meet New Jersey's commitment by adopting control measures for additional emission reductions to attain the 1-hour ozone standard and close the shortfall. Therefore, EPA will not proceed with the May 27, 2004 (69 FR 30249) proposed Finding of Failure to Implement.

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 a control measure which reduces NO_x emissions, a precursor of ozone formation, to help attain the national ambient air quality standards for ozone;
- Fulfill New Jersey's and EPA's requirement under the Act; and
- Make New Jersey's regulations for additional emission reductions federally enforceable and available for emission reduction credit in the SIP.

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

The Act requires certain states to develop reasonably available control technology (RACT) regulations for major stationary sources of NO_x and to provide for their implementation as soon as practicable but, under the 1-hour ozone standard, no later than May 31, 1995. New Jersey amended Subchapter 19, the State's NO_x RACT regulation, to achieve the needed additional NO_x reductions. Under the Act, the definition of major stationary source is based on the tons per year (tpy) of air pollution a source emits and the quality of the air in the area in which the source is located. In ozone transport regions, defined as attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, if a major stationary source of NO_x emits or has the potential to emit 100 tpy or more of NO_x, it is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast ozone transport region, established by section 184(a) of the Act. In New Jersey, pursuant to § 19.1 of Subchapter 19, a major stationary source for NO_x emits or has the potential to emit 25 tpy, the level set for severe ozone nonattainment areas. Consequently, under the 1-hour ozone standard, all sources of NO_x that emit or have the potential to emit 25 tpy within New Jersey were required to implement RACT no later than May 31, 1995.

In July 1997, EPA promulgated a revised national ambient air quality standard for ozone of 0.08 parts per million (ppm). The standard was based on a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. On April 30, 2004 (69 FR 23857), EPA established air quality designations and classifications for every area in the United States, including New Jersey, for the 8-hour ozone standard. In the April 2004 rule, EPA designated the entire state of New Jersey as nonattainment and classified New Jersey as a Subpart 2/moderate area, effective June 15, 2004. The April 2004 rule also provided that one year from the effective date of an area's 8-hour ozone standard designation, the 1-hour ozone standard would no longer apply (i.e., would be revoked) for that area. In December 2006, the United States Court of Appeals for the District of Columbia Circuit vacated the April 2004 rule. *S. Coast Air Quality Management Dist. v. EPA*, 2006 U.S. App. LEXIS 31451. The case is still in litigation, thus its

resolution is unclear. Nonetheless, on February 4, 2002 (67 FR 5152), EPA approved New Jersey's commitment to adopt NO_x emission reductions by November 15, 2007 in order to close emissions shortfalls and attain the 1-hour ozone standard.

D. What Were the Clean Air Act Requirements for Attainment of the 1-Hour Ozone Standard?

Section 182 of the Act requires states to submit SIP revisions for areas classified as nonattainment for ozone and provides dates when the revisions are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. EPA classified the New York-Northern New Jersey-Long Island area and the Philadelphia-Wilmington-Trenton area severe nonattainment areas (NAA) under the 1-hour ozone standard. Under section 182 of the Act, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the 1-hour ozone standard. As noted above, on February 4, 2002 (67 FR 5152), EPA approved New Jersey's 1-hour ozone attainment demonstration, which included New Jersey's commitment to adopt additional volatile organic compound (VOC) and NO_x emission reductions to close the emissions shortfall.

This proposal addresses the NO_x reductions to which New Jersey committed. For the New York-Northern New Jersey-Long Island NAA, the deadline for attainment of the 1-hour ozone standard is November 15, 2007. According to ambient air quality data collected since 2005, the Philadelphia-Wilmington-Trenton NAA is in attainment for the 1-hour ozone standard. Although ambient air quality monitors demonstrate attainment for the 1-hour ozone standard, the Philadelphia-Wilmington-Trenton NAA has never been reclassified to attainment. As stated above, EPA has promulgated the 8-hour ozone standard, which, dependant upon the litigation mentioned above, may supersede the 1-hour ozone standard from the effective date of the 8-hour ozone designation. If the 1-hour ozone standard is considered to be revoked, the New York-Northern New Jersey-Long Island NAA is no longer required to attain the 1-hour ozone standard by November 15, 2007. In any event, New Jersey is still required to meet its commitment to reduce additional NO_x emissions to close the emissions shortfall by November 15, 2007. The emission reductions provided by control measures in the amendments to Subchapter 19 will also be necessary

for attainment of the 8-hour ozone standard.

The Ozone Transport Commission (OTC) developed model rules for potential control measures for achieving NO_x reductions for a number of source categories and estimated the potential emission reduction benefits from implementing the model rules. The model rules were designed for use by states in developing their own regulations to close emission shortfalls. New Jersey used the OTC model rules for NO_x reductions as the basis for the submission upon which EPA is now acting.

E. When Was New Jersey's NO_x RACT Requirement Proposed and Adopted?

New Jersey proposed NO_x RACT rules and related requirements on September 20, 2004, accepted written comments on them until November 19, 2004, and held public hearings on them on October 28, 2004. New Jersey adopted the amended NO_x RACT and related requirements on September 8, 2005, and submitted them to EPA for approval as revisions to the SIP on December 16, 2005. On January 25, 2006, EPA determined the submittal to be administratively and technically complete.

F. What Is EPA's Evaluation of New Jersey's Submittal?

New Jersey previously submitted SIP revisions to Subchapter 19 to address the NO_x RACT requirements, which EPA approved as SIP revisions on January 27, 1997 (62 FR 3806) and March 29, 1999 (64 FR 14832). New Jersey also developed a NO_x Budget Trading Program (Subchapter 31), which EPA approved on May 22, 2001 (66 FR 28063). The current submission provides amendments that establish more stringent RACT limits for facilities that emit NO_x. The following is a summary of EPA's evaluation of New Jersey's December 16, 2005 SIP submittal consisting of amendments to Subchapters 16 and 19.

1. Subchapter 19

New Jersey revised Subchapter 19 to require owners and operators to implement the following new requirements:

Stationary reciprocating engines. The amended Subchapter 19, which has a compliance date of March 7, 2007, lowers the presumptive NO_x emission limits and lowers the applicability threshold for existing stationary reciprocating engines (REs) used for generating electricity. These amendments apply regardless of whether the source is located at a facility classified as major for NO_x. The

previous rule that was approved into the SIP applied to any engine source category capable of producing an output of more than 500 brake horsepower (bhp) (370 kilowatts (kW)). The new NO_x emission limits apply to the following: (1) An engine that has a rated power output of 148 kW (about 200 bhp) or greater; and (2) a group of two or more engines each of which has a rated power output of 37 kW (about 50 bhp) or greater, but less than 148 kW, and whose total combined power output is 148 kW or greater; and (3) an engine capable of producing an output of 370 kW (500 bhp) or greater.

The new NO_x emission limits for these three categories of engines, expressed as grams NO_x per bhp-hour (g/bhp-hr), range from 1.5 to 2.3 depending upon the type of engine and the fuel combusted, and will result in additional NO_x reductions ranging from zero percent to 71 percent. The rule provides that lean-burn engines that combust gaseous fuels must meet either a NO_x emission limit of 1.5 g/bhp-hr or an emission limit equivalent to an 80 percent reduction from the uncontrolled NO_x emission level. The rule also includes NO_x emission limits for the following two new source categories: (1) Rich-burn engines that combust liquid fuel and (2) lean-burn engines capable of combusting dual (gas and liquid) fuels.

New Jersey also amended Subchapter 19 to apply to engines with a maximum rated power output of 37 kW or greater that are new or modified on or after March 7, 2007. New engines must meet a NO_x emission limit of 0.90 g/bhp-hr; modified engines are to meet the same NO_x emission limit as new engines or an emission limit that is equivalent to a 90 percent NO_x reduction from the uncontrolled emission level.

Pursuant to § 19.3(f) of Subchapter 19, owners or operators of the category of engines mentioned above may comply by meeting the new presumptive NO_x emission limits or by one of the following existing options: (1) An emissions averaging plan pursuant to §§ 19.6 and 19.14; (2) an alternative maximum allowable emission limit pursuant to § 19.13; (3) a plan for phased compliance through the use of repowering pursuant to § 19.21; or (4) a plan for phased compliance through the use of innovative control technology pursuant to § 19.23. In accordance with the phased compliance plan option, owners or operators planning to comply with a phased compliance plan must fully implement the plan by November 7, 2009 and have begun to comply with interim control measures and other requirements by March 7, 2007.

Pursuant to § 19.20 of Subchapter 19, New Jersey must approve of any phased compliance plan. Applications to implement the phased compliance plans were due to New Jersey by February 7, 2006.

Each of the compliance options listed above are addressed below. First, any emissions averaging plan must be approved by New Jersey, however EPA approval is not required since the emissions averaging procedures of Subchapter 19.6 have already been approved by EPA into the New Jersey SIP. Second, any alternative maximum allowable emission limit must be approved by New Jersey and submitted for EPA approval as a SIP revision as provided in § 19.13.

Finally, the phased compliance plan options in §§ 19.21 and 19.23 would allow sources to comply with the NO_x RACT requirements in 2009 which is beyond the November 15, 2007 attainment deadline for the New York-Northern New Jersey-Long Island NAA. Sources that implement these phased compliance plan options in 2009 would not help the New York-Northern New Jersey-Long Island NAA achieve the NO_x reductions needed for attainment of the 1-hour ozone standard by the November 15, 2007 attainment date. For this reason, the new amended 2009 compliance date for phased compliance plan options is not acceptable to EPA. If the amendments to the phased compliance plan options had a compliance date prior to the start of the 2007 ozone season this would be acceptable to EPA.

It should be noted that New Jersey received no applications for phased compliance plan options before New Jersey's application deadline of February 7, 2006. Therefore, the new amendments to the phased compliance plan options at §§ 19.21 and 19.23 have no practical effect. Accordingly, EPA is not proposing to approve or disapprove these sections into the SIP. For the reasons stated above, EPA further recommends that New Jersey delete the new amendments to §§ 19.21 and 19.23 from Subchapter 19. These comments also apply to new amendments to Subchapter 19 that established phased compliance plan options for owners or operators of stationary combustion turbines and owners or operators of industrial/commercial/institutional boilers and other indirect heat exchangers.

Pursuant to § 19.8(f), effective either in 2005 or 2007, depending on the engine size, owners and operators of engines used for generating electricity, whether or not the engine is located at a major NO_x facility or, having a

maximum rated output of at least 37 kW or greater, shall adjust the engine's combustion process in accordance with the procedures specified in Subchapter 19. While combustion process adjustment is expected to reduce emissions of NO_x, New Jersey has indicated that it is not depending upon these reductions to meet the emissions shortfall.

Stationary combustion turbines. New Jersey amended Subchapter 19 by lowering the presumptive NO_x emission limits and by lowering the applicability threshold for existing stationary combustion turbines. The amendments provide that, effective March 7, 2007, the maximum gross heat input rate applicability threshold for stationary combustion turbines is 25 MM BTU/hr instead of 30 MM BTU/hr, as was the case in the previous State rule. Also, New Jersey changed the NO_x emission limits from heat input based limits (pounds per MM BTU (Lb/MM BTU)) to production output based limits (pounds per megawatt-hour (Lb/MWh)). Output based limits encourage sources to improve plant operating efficiency and pollution prevention, such as clean energy supply, which result in reduced fuel consumption and reduce emissions of pollutants, including NO_x. The new NO_x emission limits for stationary combustion turbines are in Table 4 of Subchapter 19. For oil fired turbines, the new output based NO_x limits are more stringent, by about 25 percent, than the previous input based NO_x limits. For gas fired turbines, the new NO_x emission limits are as stringent as the previous NO_x emission limits. One exception is that owners or operators of NO_x budget sources, regulated under Subchapter 31, shall continue to be subject to the current SIP-approved NO_x emission limits provided in Tables 2 and 3 of Subchapter 19.

Pursuant to § 19.5(d), owners or operators of stationary combustion turbines, with a maximum gross heat input rate of at least 25 MM BTU/hr, have the option of complying with any one of the following: (1) The new presumptive output based NO_x emission limits provided in Table 4 of Subchapter 19; (2) the alternative compliance options, in § 19.3(f) of Subchapter 19, as described above, for stationary reciprocating engines; and (3) a SIP-approved compliance option pursuant to § 19.5(c) of Subchapter 19, which requires the owner or operator to obtain New Jersey's approval of its application demonstrating an insufficient supply of water to the turbine suitable for NO_x emission control and to establish that no commercially available dry-low NO_x

combustor suitable for use in the specific turbine. It should be noted that EPA believes that the reference in § 19.5(d) to "(c)1 through 5 below" is a typographical error. EPA believes that the reference should read "(c)1 through 5 above," and that New Jersey should correct the error accordingly.

New Jersey also amended Subchapter 19 to require an owner or operator of a turbine, with a maximum gross heat input rate of at least 25 MM BTU/hr, to adjust the turbine's combustion process in accordance with the procedures specified in Subchapter 19, starting in either 2005 or 2007, depending upon the turbine's heat input rate.

Industrial/commercial/institutional boilers and other indirect heat exchangers. New Jersey amended Subchapter 19 by lowering certain presumptive NO_x emission limits and by lowering the applicability threshold for annual combustion process adjustments for industrial/commercial/institutional (ICI) boilers and other indirect heat exchangers (IHE). The amendments provide that, effective March 7, 2007, the NO_x emission limits for natural gas fired ICI boilers or other IHEs that have a maximum gross heat input rate of at least 100 MM BTU/hr is lowered to 0.10 lb NO_x/MM BTU from 0.20 lb NO_x/MM BTU and 0.43 lb NO_x/MM BTU. The change represents a reduction in NO_x emissions ranging from 50 percent to almost 77 percent, depending upon whether the firing method type is tangential, face or cyclone. New Jersey did not revise the NO_x emission limits for other size or type ICI boilers or other IHEs. The new NO_x emission limits for ICI boilers and other IHEs are in provided Table 7 of Subchapter 19.

As with owners and operators of stationary combustion turbines and stationary reciprocating engines, owners and operators of ICI boilers and other IHEs have the option of complying with either the new presumptive NO_x emission limits or the alternative compliance options, pursuant to § 19.3(f) of Subchapter 19, as described above for stationary reciprocating engines.

New Jersey also amended Subchapter 19 by lowering the applicability threshold of 20 MM BTU/hr heat input rate for sources required to annually adjust their combustion process. The amendments provide that, effective March 7, 2007, the applicability threshold for such sources is 5 MM BTU/hr maximum gross heat input rate. This threshold applies regardless of whether the source is located at a facility classified as major for NO_x. Effective in either 2007, 2008, or 2010,

depending upon the source's heat input rate, owners or operators of such sources are required to adjust the combustion process in accordance with the procedures specified in Subchapter 19.

Emergency generators. New Jersey amended Subchapter 19 by adding a new provision, § 19.11, which requires owners and operators of emergency generators with a maximum rated output of 37 kW, to maintain detailed and specific records on site for five years whenever an emergency generator has been in use. In addition, New Jersey amended § 19.2(d) by deleting the following two conditions for an emergency generator exemption from Subchapter 19: (1) 500 hours operating restriction over any consecutive twelve month period; and (2) potential to emit (PTE) of less than 25 tpy NO_x emissions during an annual period of operation.

EPA has determined that New Jersey's additional amendments to § 19.2(d), and to the definition of emergency generators in § 19.1, clarify when emergency generators shall and shall not be used. These amendments combined with the new recordkeeping provisions in § 19.11 provide New Jersey and EPA with information for any enforcement action, if needed.

During the public comment period, a citizen commented that the removal of the 500 hour emergency operation time limit made the PTE analysis and netting analysis for a source ambiguous. EPA's September 1995 guidance entitled, "Calculating Potential to Emit (PTE) for Emergency Generators," establishes the criteria for determining a source's PTE and recommends 500 hours as an appropriate default assumption for estimating the number of hours an emergency generator could be expected to operate under worst-case conditions. EPA's PTE guidance for emergency generators also states that alternative estimates can be made on a case-by-case basis where justified by the source owner or permitting authority.

New Jersey deleted the 500 hour operating restriction for emergency generators from Subchapter 19 because it believed that "hours of operation" is not an appropriate criteria for defining an emergency generator. In a communication to EPA, New Jersey interpreted the EPA proposed rule "Standards of Performance for Stationary Compression Ignition Internal Combustion Engines" (70 FR 39869, July 11, 2005), as further justification for deletion of the 500 hour restriction. In a February 14, 2006 letter to New Jersey, EPA responded that New Jersey misinterpreted EPA's July 2005 proposed rule and that "for purposes of

the NSR and title V programs New Jersey should continue as they have and permit emergency units at some amount of operation sufficiently large to cover emergencies (i.e., 500 hours per year). Malfunctions that may require the operation of the emergency units and that may exceed the 500 hours/year limit could be handled through enforcement discretion on a case-by-case basis, as appropriate." Therefore, PTE requirements for emergency generators should be included in New Jersey's operating permit regulations, i.e., Subchapters 8 and 22, and should include the provisions that were deleted from the current SIP approved Subchapter 19, i.e., (1) the 500 hour annual operational restriction, or some other appropriate operating period in accordance with EPA's September 1995 guidance, and (2) the exemption for sources with a PTE of less than 25 tpy NO_x.

While EPA proposes to approve the new emergency generator provisions, for rule consistency, EPA believes it appropriate, although not required, that New Jersey revise the currently adopted Subchapter 19 to also include the emergency generator restrictions identified in the current SIP-approved Subchapter 19. EPA would consider new language within Subchapter 19 that would allow owners and operators to operate emergency generators without restriction to operating hours for special situations such as when the governor of New Jersey declared an emergency because of an unprecedented and unexpectedly long blackout or a *force majeure* event (like a severe hurricane).

Open Market Emissions Trading (OMET) Program. In July 1996, New Jersey adopted amendments to Subchapter 19 for consistency with the state-adopted Subchapter 30, called the OMET Program. The OMET Program, and amendments to Subchapter 19, permitted a source regulated under Subchapter 19 to meet its NO_x RACT emission requirements by purchasing discrete emission reduction credits (DERs). The DERs were generated by a source that reduced NO_x emissions beyond its regulatory requirements. EPA and New Jersey identified a number of problems with the OMET Program. EPA withdrew its proposed conditional approval of the OMET Program on October 18, 2002 and New Jersey terminated Subchapter 30 on February 25, 2004. On April 5, 2004, New Jersey amended Subchapter 19, withdrew the OMET provisions adopted in July 1996, and replaced them with new provisions that included a compliance schedule for the affected OMET sources. The latter OMET compliance provisions are

included in New Jersey's December 2005 SIP revision to EPA.

EPA objected to the new OMET compliance schedule, and related compliance requirements for sources subject to NO_x RACT regulation. The new OMET compliance schedule would allow sources to comply with the NO_x RACT requirements of Subchapter 19 beyond the May 31, 1995 compliance date deadline mandated by the Act. In a December 2005 SIP submittal letter, New Jersey committed to delete OMET from Subchapter 19, and from Subchapters 8 and 16. Therefore, EPA expects New Jersey, in future rulemaking, to delete the OMET-related provisions in Subchapters 8, 16 and 19, i.e., §§ 8.3(o), 8.20(b)(3), 16.1A(g), 16.1A(h), 19.3(g), 19.3(h), 19.27, and the 19.27 Appendix, and is not approving them into the SIP.

Additional amendments to Subchapter 19. New Jersey adopted a number of other amendments since EPA last approved amendments to Subchapter 19 (64 FR 14832, March 29, 1999). Among other things, these amendments: (1) Revised terms and definitions that do not change the meaning or stringency of the provisions; (2) revised the due date for permit applications and submittals of NO_x Control Plans, pursuant to § 19.13, to February 7, 2006; (3) revised §§ 19.2 and 19.9 by deleting the applicability threshold of 25 tpy PTE NO_x for asphalt plants, which made the provisions more stringent; (4) revised the ozone season closing date to September 30 to conform with the closing date provided in Subchapter 31, the NO_x Budget Program; and (5) revised testing requirements to conform with certain new control measures for stationary reciprocating engines.

2. Subchapter 16

The amendments to Subchapter 16 are administrative in nature and ensure consistency with the amendments to Subchapter 19. The amendments to Subchapter 16 include the following: (1) Revised terms and definitions that do not change the meaning or stringency of the provisions; (2) lowered applicability thresholds for the following source categories that are required to implement annual combustion adjustments: (a) Small boilers and IHEs, not used for generating electricity; (b) stationary combustion turbines; and (c) stationary reciprocating engines, if used to generate electricity; and (3) a revised definition and recordkeeping requirements for emergency generators.

3. Summary of EPA's Evaluation

EPA expects that the revisions to Subchapter 19 will result in additional reductions in NO_x emissions to help New Jersey meet the emissions reduction shortfall and attain the ozone standard. EPA evaluated New Jersey's SIP submittal and proposes to find Subchapters 16 and 19 approvable. However, as explained above, EPA takes no action on and expects New Jersey to delete: (1) All OMET provisions in Subchapters 8, 16 and 19; (2) the new amendments to phased compliance plan through repowering in § 19.21; and (3) the new amendments to phased compliance plan through the use of innovative control technology in § 19.23. The December 16, 2005 SIP submittal will strengthen New Jersey's SIP for reducing ground level ozone by providing additional NO_x reductions beginning on March 7, 2007.

EPA completed a detailed analysis and evaluation to determine the approvability of New Jersey's December 16, 2005 SIP revision. EPA's evaluation of the SIP submittal is detailed in a document entitled "Technical Support Document—NO_x RACT SIP Revision—State of New Jersey." A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or the Technical Support Document can be viewed at <http://www.regulations.gov>.

II. Conclusions

EPA evaluated New Jersey's submittal for consistency with the Act, EPA regulations and EPA policy. The proposed new control measures will strengthen the SIP by providing additional NO_x emission reductions. Accordingly, EPA is proposing to approve the revisions to Subchapter 19, and related revisions to Subchapter 16, as adopted on September 8, 2005, except that EPA is not acting, at this time, on OMET Program provisions in Subchapters 16 and 19 or the new amendments to phased compliance plans by repowering and innovative control technology in §§ 19.21 and 19.23, respectively. EPA is not approving any dates that allow for NO_x RACT compliance beyond May 31, 1995, in general, and beyond May 1, 1999 for completion of repowering for sources that should have complied by the date required in the March 29, 1999 EPA-approved SIP. In addition, at a later date, EPA will act on Subchapter 8, as adopted by New Jersey on September 8, 2005.

With the adoption of Subchapter 19, New Jersey has fulfilled its obligation to

adopt all six control measures that New Jersey identified as necessary to attain the 1-hour ozone standard. Therefore, EPA will not proceed with the May 27, 2004 (69 FR 30249) proposed Finding of Failure to Implement.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 6, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7-4665 Filed 3-13-07; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07-805; MB Docket No. 05-132; RM-11217]

Radio Broadcasting Services; Junction, Melvin, and Menard, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The staff approves the withdrawal of a petition for rulemaking in this FM allotment rulemaking proceeding. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05-132, adopted February 21, 2007, and released February 23, 2007. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

In response to a rulemaking petition filed by Charles Crawford, the *Notice of Proposed Rulemaking* proposed the allotment of Channel 242A at Melvin, Texas. To accommodate this allotment, it also proposed the substitution of Channel 292A for vacant Channel 242A at Menard, Texas, and the substitution of Channel 224A for vacant Channel 292A at Junction, Texas. The withdrawal of the petition for rulemaking complies with Section 1.420(j) of the Commission's rules because the rulemaking petitioner is not receiving any money or other consideration in return for the withdrawal. See 70 FR 19398 (April 13, 2005).

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the petition for rulemaking was dismissed).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7-4544 Filed 3-13-07; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, and 396

[DOT Docket No. FMCSA-2004-18940]

RIN 2126-AA89

Electronic On-Board Recorders (EOBRs) for Documenting Hours of Service; Listening Sessions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening sessions.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces public listening sessions to