

under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in Rev. Proc. 2007-21 (or successor document) (see § 601.601(d)(2)(ii)(b)) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for, or collectibility of, the penalties.

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-30303 Filed 12-19-08; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2008-0841, FRL-8755-5]

#### Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to New Jersey's State Implementation Plan (SIP) submitted on November 3, 2008. The proposed SIP revision includes a regulation that allows for continuation of New Jersey's statewide nitrogen oxides (NO<sub>x</sub>) budget and NO<sub>x</sub> allowance trading program beyond the year 2008. New Jersey's program began in 2003 for large electric generating units and industrial sources. The intended effect of this proposed SIP revision is to allow the continuation of the State's program to reduce emissions of NO<sub>x</sub> in order to help attain the national ambient air quality standard for ozone. EPA is proposing this action pursuant to section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before January 21, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2008-0841, 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-2008-0841. 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://](http://www.regulations.gov)

[www.regulations.gov](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 <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:** Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. What action is EPA proposing to take?
- II. Why is EPA proposing this action?
- III. When did New Jersey submit the proposed SIP revision to EPA and what did it include?
- IV. What guidance did EPA use to evaluate New Jersey's proposed SIP revision?
- V. What is the result of EPA's evaluation of New Jersey's proposed SIP revision?
- VI. What is New Jersey's NO<sub>x</sub> Budget Program?
- VII. Proposed Action
- VIII. Administrative Requirements

**I. What action is EPA proposing to take?**

EPA is proposing to approve a revision to New Jersey's ground level ozone SIP which New Jersey submitted on November 3, 2008, which was published in the *New Jersey Register* on November 17, 2008. The proposed SIP revision includes an amended regulation, New Jersey Administrative Code (N.J.A.C.) 7:27-31 (Subchapter 31), "NO<sub>x</sub> Budget Program." New Jersey amended Subchapter 31 to allow the continuation of New Jersey's NO<sub>x</sub> Budget Program beyond December 31, 2008. EPA proposes that New Jersey's submittal is fully approvable as a SIP strengthening measure for New Jersey's ground level ozone SIP and EPA has determined that it meets EPA guidance and the air quality objectives of the Clean Air Act (the Act).

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the State's proposed revision is substantially changed when it submits its final rule, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the proposed SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

**II. Why is EPA proposing this action?**

EPA is proposing this action in order to:

- Approve the continuation of a control program which reduces NO<sub>x</sub> emissions, a precursor to ozone, and which therefore helps to achieve the national ambient air quality standard for ozone,
- Fulfill New Jersey's and EPA's requirements under the Act,

- Allow federal enforceability and SIP credit to continue for New Jersey's NO<sub>x</sub> Budget Program,

- Give the public an opportunity to submit written comments on EPA's action, as discussed above in the **DATES** and **ADDRESSES** sections.

**III. When did New Jersey submit the proposed SIP revision to EPA and what did it include?**

New Jersey submitted the amended Subchapter 31 to EPA on November 3, 2008. New Jersey's proposed SIP revision repeals N.J.A.C. 7:27-31.23, the expiration of the State's NO<sub>x</sub> Budget Program. N.J.A.C. 7:27-31.23 currently provides that the NO<sub>x</sub> Budget Program would cease to exist beyond December 31, 2008, and provides for reconciliation in the event a source has insufficient NO<sub>x</sub> Budget allowances to meet its obligation at the end of the program. Therefore, upon New Jersey's adoption, and EPA approval, of the amended Subchapter 31, N.J.A.C. 7:27-31.23 will no longer apply and New Jersey's NO<sub>x</sub> Budget Program will continue to apply to NO<sub>x</sub> Budget sources as of the control period beginning in 2009 and any control period thereafter.

**IV. What guidance did EPA use to evaluate New Jersey's proposed SIP revision?**

To evaluate New Jersey's proposed SIP revision, EPA relied on information contained in a letter, dated September 2, 2008, from Robert J. Meyers, EPA's Principal Deputy Assistant Administrator, addressed to Lisa P. Jackson, Commissioner of the New Jersey Department of Environmental Protection. The reader may view this guidance document at <http://www.regulations.gov>, as discussed above in the Docket section.

**V. What is the result of EPA's evaluation of New Jersey's proposed SIP revision?**

EPA has evaluated New Jersey's proposed SIP revision submittal and proposes to find it approvable. New Jersey's proposed SIP revision is consistent with EPA's September 2, 2008 letter which asks New Jersey to reinstate the NO<sub>x</sub> Budget Program before May 1, 2009. The November 3, 2008 submittal will enable New Jersey to continue its NO<sub>x</sub> Budget Program beyond December 31, 2008 requiring affected sources to reduce NO<sub>x</sub> emissions during the ozone season control period of 2009 and beyond, thereby helping New Jersey to attain the national ambient air quality standard for ozone.

**VI. What is New Jersey's NO<sub>x</sub> Budget Program?**

In response to EPA's 1998 NO<sub>x</sub> SIP Call regulation, New Jersey amended Subchapter 31, "NO<sub>x</sub> Budget Program." With Subchapter 31, New Jersey established a NO<sub>x</sub> cap and allowance trading program for the ozone season (May 1 through September 30). New Jersey developed the regulation in order to reduce NO<sub>x</sub> emissions and allow its sources to participate in EPA's interstate NO<sub>x</sub> allowance trading program described in § 51.121(b)(2). Subchapter 31 establishes a statewide NO<sub>x</sub> emissions cap of 8200 tons during the ozone season for all affected sources. Subchapter 31 applies to all electric generating units with nameplate electricity generating capacities greater than 15 megawatts that sell any amount of electricity as well as any non-electric generating units that have a heat input capacity greater than 250 million BTUs per hour.

For further details concerning New Jersey's NO<sub>x</sub> Budget Program refer to EPA's proposed rule 65 FR 71278 (November 30, 2000), and a corrected proposed rule 65 FR 77695 (December 12, 2000) and EPA's final rulemaking 66 FR 28063 (May 22, 2001) approving Subchapter 31.

**VII. Proposed Action**

EPA has reviewed New Jersey's November 3, 2008 SIP submittal and finds it approvable. Therefore, EPA proposes approval of the revised Subchapter 31 into the New Jersey SIP at this time.

**VIII. Administrative Requirements***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, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*  
 Dated: December 10, 2008.  
**Alan J. Steinberg,**  
*Regional Administrator, Region 2.*  
 [FR Doc. E8-30378 Filed 12-19-08; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2007-0011; FRL-8753-6]  
**RIN 2060-AN72**

**Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Proposed rule; stay.

**SUMMARY:** EPA is proposing to extend the stay of certain provisions of the new standards of performance for petroleum refineries. In the “Rules and Regulations” section of this **Federal Register**, we are extending the stay as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received by January 21, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0011, by mail to Air and Radiation Docket (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).  
**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-0884; fax number: (919) 541-0246; e-mail address: *lucas.bob@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA issuing this proposed rule?**

This document proposes to take action on the new standards of performance for petroleum refineries at 40 CFR part 60, subpart Ja. We have published a direct final rule extending the stay of the provisions under reconsideration 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 on 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.

**II. Does this action apply to me?**

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS <sup>1</sup> code	Examples of regulated entities
Industry .....	32411	Petroleum refiners.
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards for petroleum refineries. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.100a. If you have

any questions regarding the applicability of the new source performance standards to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**III. Statutory and Executive Orders**

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the “Rules and Regulations” section of this **Federal Register**.