

Proposed Rules

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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

[CA 249-0290b; FRL-7046-1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants and from other solvent containing materials. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 12, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 1001 "I" Street,
Sacramento, CA 95814.

Bay Area Air Quality Management
District, 939 Ellis Street, San
Francisco, CA 94109.

South Coast Air Quality Management
District, 21865 E. Copley Drive,
Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BAAQMD 8-51 and SCAQMD 443.1. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 3, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01-22737 Filed 9-11-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2; Docket No. NJ46-226, FRL-7055-6]

Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans and Transportation Conformity Budgets for 2002, 2005 and 2007

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a New Jersey State Implementation Plan (SIP) revision involving the State's 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements including the separate requirement for enforceable commitments for the 1-hour ozone attainment demonstration. Specifically, EPA is proposing approval of the: 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories;

Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007; transportation conformity budgets for 2002, 2005 and 2007; and contingency measures. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone.

DATES: Comments must be received on or before October 12, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the New Jersey submittals and EPA's Technical Support Document are available at the following addresses for inspection during normal business hours:

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

New Jersey Department of
Environmental Protection, Office of
Air Quality Management, Bureau of
Air Pollution Control, 401 East State
Street, CN027, Trenton, New Jersey
08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan concerning general questions or RFP Plans and Demian Ellis concerning emission inventories, both of the Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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I. Overview

A. What Action Is EPA Taking Today?

On April 11, 2001, New Jersey submitted a revision to its 1-hour ozone SIP which addressed several Clean Air Act (Act) requirements. After reviewing this submittal compared to EPA policy and guidance, EPA is proposing approval of this submittal which includes: the 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories; Reasonable Further Progress (RFP) Plans for milestone years 2002, 2005 and 2007; transportation conformity budgets for 2002, 2005 and 2007; and contingency measures. This submittal applies to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset,

Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

This SIP revision is intended to fulfill the Act's three percent per-annum reasonable further progress (RFP) plan requirement. It also includes: ozone projection year emission inventories, contingency measures and transportation conformity budgets and fulfills the periodic emission inventory requirement for 1996.

B. What Is Required by the Clean Air Act and How Does it Apply to New Jersey?

Section 182 of the Act specifies the required State Implementation Plan (SIP) submissions and requirements for areas designated nonattainment for the 1-hour ozone standard and when the states must make these submissions to EPA. EPA has issued the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) describing in detail EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal.

New Jersey has four ozone nonattainment areas (NAAs). These areas are the Allentown-Bethlehem Easton Area (Warren County), Atlantic City Area, the Trenton Area, and the Northern New Jersey Area. For the Atlantic City and Allentown-Bethlehem Easton areas, the most recent three years of data continue to demonstrate attainment of the 1-hour ozone standard and, therefore, RFP Plans are not necessary. As for the Northern New Jersey and Trenton NAAs, which are classified as severe ozone nonattainment areas, the most recent

three years of data, while showing improved air quality, continues to show nonattainment. The primary focus of this **Federal Register** action is the Northern New Jersey and Trenton NAAs. Additional details of EPA's review are included in the Technical Support Document.

II. Emission Inventories

A. What Is Contained in New Jersey's 1996 Periodic Emission Inventory?

New Jersey developed a 1996 actual inventory consisting of point, area, on-road mobile, nonroad mobile, and biogenic source emissions. The point source inventory was based on data from New Jersey's annual Emission Statement Program which requires sources (which have the potential to emit greater than 10 tons per year of volatile organic compounds (VOCs) or 25 tons of oxides of nitrogen (NO_x)) to report actual emissions. The area source inventory was based on the latest factors and methodologies recommended by EPA. The on-road mobile source inventory was developed using data on vehicle miles traveled provided by the Metropolitan Planning Organizations in conjunction with emission factors generated using EPA's MOBILE5 emissions model for the eight on-road vehicle classes. Vehicle registration data for 1996 was used in the modeling. The nonroad mobile source inventory was developed using EPA's draft NONROAD model to generate emissions for the nonroad engines and equipment category; landing and takeoff data to generate aircraft emissions; estimated fuel consumption data for locomotive emissions; and estimated fuel consumption and vessel trips for commercial marine vessel emissions. The biogenic source inventory was developed using the USEPA's Biogenic Emission Inventory System (BEIS) Version 2.3. Table 1 below provides a summary of 1996 VOC and NO_x emissions in tons per summer day (tpd) statewide and by nonattainment area.

TABLE 1.—SUMMARY OF 1996 VOC AND NO_x EMISSIONS IN NEW JERSEY BY STATE AND NONATTAINMENT AREA
[tons per day]

Category	Point	Area	On-Road	Nonroad	Biogenic	Total
VOC Emissions						
Atlantic City	0.43	13.02	13.38	20.29	114.07	161.19
Northern N.J.	140.87	215.27	206.52	138.41	310.70	1011.77
Trenton	28.73	72.35	82.70	41.99	241.91	467.68
Allentown	3.19	4.34	6.41	3.04	20.84	37.82
State Total	173.22	304.98	309.01	203.73	687.52	1678.46

TABLE 1.—SUMMARY OF 1996 VOC AND NO_x EMISSIONS IN NEW JERSEY BY STATE AND NONATTAINMENT AREA—
Continued
[tons per day]

Category	Point	Area	On-Road	Nonroad	Biogenic	Total
NO_x Emissions						
Atlantic City	39.91	1.81	23.80	11.46	0.85	77.83
Northern N.J.	154.20	29.57	302.92	202.07	3.87	692.63
Trenton	94.47	7.86	112.94	52.18	3.09	270.54
Allentown	2.47	0.42	14.17	3.53	0.99	21.58
State Total	291.05	39.66	453.83	269.24	8.80	1062.58

EPA proposes to find New Jersey's 1996 periodic emission inventory to be consistent with EPA's policy and guidance and is approvable.

B. How Were New Jersey's 2002, 2005, and 2007 Projection Year Inventories Developed and What Were the Results?

In order to project its VOC and NO_x emissions out to future years, New Jersey based its projections on the 1996 periodic emission inventory. The point source projections were developed by applying growth factors generated either from the Economic Growth Analysis System (EGAS) or the Department of Energy's Energy Information Administration (EIA). The area source projections were developed by applying growth factors which were based on a variety of indicators including but not limited to: population, vehicle miles

traveled, fuel combustion, pesticide use, traffic paint use, asphalt applied, value added, etc. The on-road mobile source projections were developed for the eight vehicle classes by multiplying emission factors generated from MOBILE5 by VMT projections supplied by the Metropolitan Planning Organizations within the State. The nonroad mobile source projections were derived in several ways: for the nonroad equipment and engine category, EPA's draft NONROAD model was used to generate the projections. For commercial marine vessels, the State determined growth factors from the rulemaking document entitled, "Control of Emissions of Air Pollution from New Compression-Ignition Marine Engines at or above 37 Kilowatts," and applied the factors by pollutant and vessel category. For locomotive emission projections,

the State based its projections upon the regulatory support document for the rulemaking entitled, "Emission Standards for Locomotives and Locomotive Engines." The State determined the emission factors and applied them by the percent of the locomotive engines covered by the EPA rulemaking. Locomotive engines not covered by the rulemaking were projected by population. For aircraft emission projections, the State based these on either the number of landing and take-off operations, EGAS model calculations, or flight facility specific information, depending upon the aircraft and the availability of the data. Table 2 below provides a summary of projected VOC and NO_x emissions for the Northern New Jersey and Trenton NAAs.

TABLE 2.—SUMMARY OF 2002, 2005, AND 2007 PROJECTED VOC AND NO_x EMISSIONS IN NEW JERSEY BY NONATTAINMENT AREA¹ (TPD)

Category	Point	Area	On-Road	Nonroad	Total
2002					
Northern New Jersey					
VOC	149.01	225.15	135.48	106.70	616.34
NO _x	94.01	29.58	229.28	220.65	573.52
Trenton					
VOC	30.42	76.34	61.63	33.31	201.70
NO _x	84.69	7.85	86.14	55.30	233.98
2005					
Northern New Jersey					
VOC	156.27	234.03	94.58	93.23	578.11
NO _x	85.27	29.77	178.75	217.72	511.51
Trenton					
VOC	31.83	79.42	42.64	29.62	183.51
NO _x	71.34	7.89	66.04	54.12	199.39
2007					
Northern New Jersey					
VOC	162.13	238.40	89.83	83.51	573.87

TABLE 2.—SUMMARY OF 2002, 2005, AND 2007 PROJECTED VOC AND NO_x EMISSIONS IN NEW JERSEY BY NONATTAINMENT AREA ¹ (TPD)—Continued

Category	Point	Area	On-Road	Nonroad	Total
NO _x	93.64	30.14	165.12	212.72	501.62
Trenton					
VOC	² n/a	n/a	n/a	n/a	n/a
NO _x	n/a	n/a	n/a	n/a	n/a

¹ Emissions include growth and application of controls.² Not applicable.

EPA proposes to find New Jersey's 2002, 2005, and 2007 projection year emission inventories to be consistent with EPA's policy and guidance and finds them approvable.

III. Reasonable Further Progress Plans

A. What Is a Reasonable Further Progress (RFP) Plan?

A RFP Plan is a plan developed by a state for reducing VOC emissions by three percent per year averaged over each consecutive three-year period beginning six years after enactment of the Act (1996) until the area attains the 1-hour ozone standard (2005 for the Trenton NAA and 2007 for the Northern New Jersey NAA). EPA previously approved the 15 and 9 Percent ROP Plans for New Jersey (64 FR 19913,

April 23, 1999). Those plans identified the control measures and the VOC and NO_x emission reduction credits associated with those measures that would be achieved from 1990 through 1999. This proposal takes action on the RFP Plans for the Trenton NAA for milestone years 2002 through the attainment year 2005; and the Northern New Jersey NAA for milestone year 2002, 2005, through the attainment year 2007.

B. How Does New Jersey Demonstrate RFP?

Using 1990 base year emission inventory which EPA approved on April 23, 1999 (64 FR 19913), New Jersey calculated an "adjusted baseline inventory" by removing the biogenic and non-creditable reductions (Federal

Motor Vehicle Control Program and Federal Gasoline Reid Vapor Pressure regulations) from the base year emissions. The required RFP percent reduction was then applied to the adjusted baseline year inventory to yield the VOC emission target levels. New Jersey used a cumulative percent reduction methodology for the RFP demonstration. Instead of showing a 9% reduction between 2000–2002, a 9% reduction between 2003–2005 and a 6% between 2006–2007, the State showed it would achieve 33% by 2002 (15% from the 15 Percent ROP Plan plus 9% from the Post 1996 ROP Plan plus 9% from the Post 1999 RFP Plan equaling a total of 33%), similarly, a 42% reduction by 2005 and 48% reduction by 2007. These are summarized in Table 3.

TABLE 3.—VOC REASONABLE FURTHER PROGRESS TARGET LEVELS

Nonattainment Area New Jersey Portion	Base Year (tpd)	VOC Emission Target levels (tpd)		
	1990	2002	2005	2007
Northern New Jersey	957.03	593.91	512.90	459.89
Trenton	358.15	229.35	196.27	

The VOC target emission level is the level the State must be at or below in order to achieve RFP. The State selected the control measures which will reduce the projected VOC emissions to this target level or below. The projected VOC and NO_x emissions include growth that occurs from the 1990 base year. These measures must result in attainment as soon as practicable, but no later than the attainment date based on the nonattainment areas' classification.

Using the projection year emission inventories (discussed above) along with the selected control measures, the State then checked its control strategy selection by determining what the emissions would be in the milestone years and compares it to the target VOC emission levels.

C. Can Control Measures That Reduce NO_x Be Used To Demonstrate RFP?

New Jersey has shown using photochemical grid modeling that NO_x reductions will contribute toward attaining the ozone standard. Section 182(c)(2)(C) of the Act allows NO_x reductions to be substituted for VOC reductions in RFP demonstrations in accordance with EPA guidance. New Jersey has shown that NO_x reductions may appropriately be counted towards the RFP requirements. A full explanation of how New Jersey satisfied EPA's guidance is included in the TSD.

Based on EPA guidance, New Jersey has demonstrated that every ton of NO_x is equivalent to approximately 0.91 tons of VOC in the Northern New Jersey NAA on a percent of total inventory basis. In the Trenton NAA New Jersey

only used VOC reductions to demonstrate RFP.

D. What Are the Results of New Jersey's RFP Plan Demonstration?

New Jersey demonstrated RFP based on a cumulative methodology. It incorporated growth in point, area and mobile source categories, and benefits from State and federal control measures. New Jersey also adjusted the NO_x reductions to account for growth that is projected to occur by the target years. NO_x emission reductions were used along with VOC emission reductions in the Northern New Jersey NAA to demonstrate RFP.

Figure 1 plots the VOC target out to 2007 for the Northern New Jersey NAA. The projected VOC emissions including growth and applying control measures is also plotted and a third line

represents the sum of the VOC emissions and VOC equivalent reductions resulting from NO_x reductions (NO_x equivalent). As can be seen from Figure 1, the sum of the VOC emissions with NO_x equivalent reductions falls below the VOC target level. This demonstrates that RFP will be achieved. The projected controlled

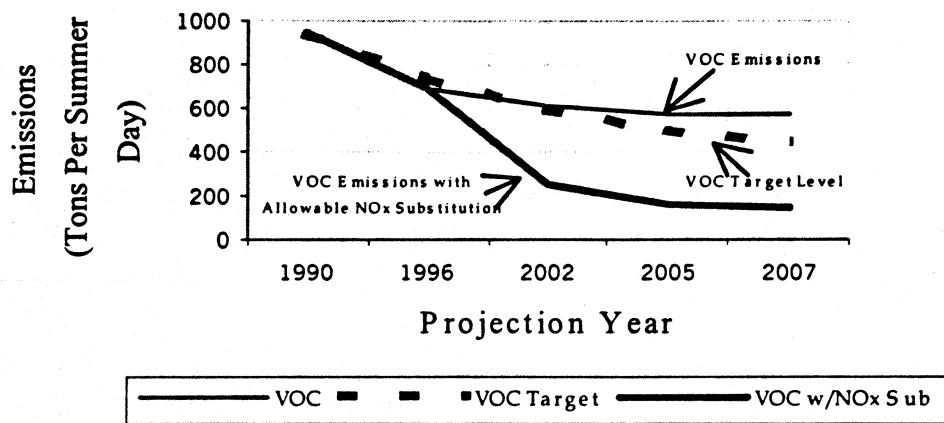
level of emissions in milestone years 2002, 2005 and 2007 are 250.41, 158.84, and 145.84 tons per summer day, respectively.

Figure 2 shows the results of applying the RFP Plans for the Trenton NAA. It demonstrates that RFP is achieved with only VOC control measures. The projected controlled level of emissions

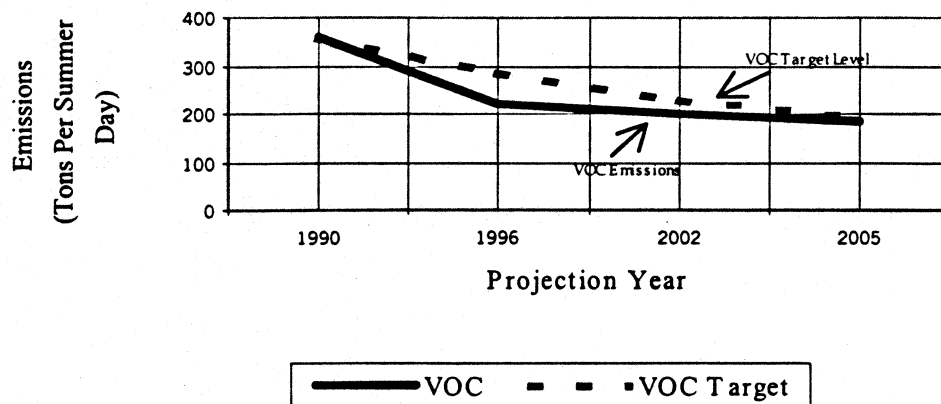
in milestone years 2002 and 2005 are 201.71 and 183.53 tons per summer day, respectively. New Jersey adopted the NO_x control measures with statewide applicability and the NO_x controls are needed to demonstrate attainment of the 1-hr ozone NAAQS, but not to meet RFP requirements in the Trenton NAA.

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**Figure 1: Projection Year Emissions
To Required Attainment Date
(For Northern N.J. NAA)**



**Figure 2: Projection Year Emissions
To Required Attainment Date
(for Trenton NAA)**



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E. How Will New Jersey Achieve the Necessary Emission Reductions?

New Jersey provided a plan which contains control measures sufficient to achieve the RFP reductions required for

the Northern New Jersey and Trenton NAAs. Table 4 identifies the specific control measures New Jersey will rely on between 2000-2007. Some of those control measures were utilized in the federally approved 15 and 9 Percent ROP plans, however, due to the nature

of the control measures/programs these measures achieve additional emission reduction credits beyond those used in the 15 and 9 Percent ROP Plans. These unused reductions are being applied to these RFP Plans. For a concise description of those control measures

and emission reduction credits used in the 15 and 9 Percent Plans, the reader is referred to EPA's proposed rulemaking actions on the New Jersey 15 and 9 Percent ROP plans, published in the **Federal Register** on April 30, 1997 (62 FR 23410) and March 1, 1999 (64 FR 9952). All of the measures identified in Table 4 have either been adopted by New Jersey and approved by EPA as SIP revisions or are promulgated federal measures.

Table 5 contains a list of the new measures that were not previously included in New Jersey's 15 and 9 Percent Plans. A brief description of these new measures follows the table.

TABLE 4.—CONTROL MEASURES INCLUDED IN NEW JERSEY RFP PLANS

Stationary Sources:
Pre-1996 Controls Applied to New Sources
NO _x Budget Program
Area Sources:
Marine Vessel Ballasting and Loading of Gasoline (Barge & Tanker)
Architectural Surface Coatings
Consumer and Commercial Solvents
Auto Refinishing
Landfills
On-road:
New Vehicle Standards—Tier 1
New Vehicle Standards—Tier 2
National Low Emission Vehicle Program—NLEV
Reformulated Gasoline—Phase II
Enhanced Inspection and Maintenance (I/M)
Heavy Duty Diesel Vehicle Defeat Device & New Engine Standards
Nonroad:
Spark Ignition, Small Engines
New Marine Gas Engines
Nonroad Diesel Engines
Locomotive Engines
Commercial Marine Diesel Engines

TABLE 5.—NEW CONTROL MEASURES NOT INCLUDED IN NEW JERSEY'S 15 AND 9 PERCENT ROP PLANS

NO _x Budget Program
Reformulated Gasoline Phase II—On-Road
Enhanced Inspection and Maintenance (I/M) Program
Heavy Duty Diesel Vehicle Defeat Device & New engine standards
New Vehicle Standards—Tier 2
Nonroad measures:
Spark Ignition, Small Engines
New Marine Gas Engines
Nonroad Compression Engines
Locomotive Engines
Commercial Marine Diesel Engines

1. NO_x Budget Program

New Jersey's NO_x reduction programs began with adopting regulations requiring NO_x reasonably available

control technology (RACT) for stationary sources emitting NO_x. This was approved by EPA on March 29, 1999 (64 FR 14834). It was further expanded to incorporate the Ozone Transport Commission (OTC) Memorandum of Understanding recommendations which were effective starting in 1999 and additional requirements in 2003 for major NO_x sources. These were approved by EPA on September 5, 2000 (65 FR 53599).

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_x SIP Call." See 63 FR 57356. At that time, the NO_x SIP Call required 22 states and the District of Columbia¹ to meet statewide NO_x emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_x SIP Call set out a schedule that required the affected states, including New Jersey, to adopt regulations by September 30, 1999, and to implement control strategies by May 1, 2003.²

The NO_x SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. However, the SIP Call notice suggested that imposing statewide NO_x emission caps on large fossil-fuel fired industrial boilers and electricity generators would provide a highly cost-effective means for states to meet their NO_x budgets. On December 10, 1999 and July 31, 2000, New Jersey submitted SIP revisions which included revisions to Subchapter 31, "NO_x Budget Program," (adopted July 28, 2000) and a narrative explaining the Regional NO_x Cap Program requirements in New Jersey. These

¹ Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

² On May 25, 1999, the D.C. circuit issued a stay of the submission requirement of the SIP Call pending further order of the court. *Michigan v. EPA*, No. 98-1497 (D.C. Cir. May 25, 1999) (order granting stay in part). On December 10, 1999 and July 31, 2000, New Jersey voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on *Michigan v. EPA*, affirming most aspects of the SIP Call and remanding limited portions to the Agency. On June 22, 2000, the DC circuit lifted the stay of the SIP submission obligations and provided states until October 30, 2000 to adopt regulations.

submittals were made to strengthen its 1-hour ozone SIP and to comply with EPA's NO_x SIP Call during each ozone season, i.e., May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28063) EPA approved New Jersey's NO_x control program and found it complied with the NO_x SIP Call.

2. Reformulated Gasoline Phase II—On-Road

The second phase of the federal reformulated gasoline program (RFG Phase II) began on January 1, 2000 and applied statewide. RFG Phase II reduces emissions further than the first phase of the program, requiring minimum ozone season VOC reductions of 27 percent from VOC levels based on average 1990 gasoline formulations. The second phase of the program also requires that refiners reduce NO_x levels by a minimum of seven percent from average 1990 levels. New Jersey has accounted for the emissions reduction effects of RFG Phase II in its most recent RFP Plans.

3. Enhanced I/M Program

The implementation phase of New Jersey's Enhanced I/M program was delayed and the emission reductions were unavailable for use in the 15 and 9 Percent Rate of Progress Plans. It is currently operational and EPA reinstated the interim approval on June 12, 2001 (66 FR 31544). New Jersey has submitted its proposed final National Highway Systems Designations Act evaluation report and its revised performance standard modeling for parallel processing as a SIP revision. EPA will be proposing action on this submittal in a separate **Federal Register**.

4. Heavy-Duty Diesel Vehicle (HDDV) Defeat Devices Settlement

On October 22, 1998, the Department of Justice and the EPA announced a settlement with seven major diesel engine manufacturers to resolve claims that they illegally installed software that resulted in increased emissions. New Jersey has accounted for the decrease in emission reductions from this program by identifying additional credits from other programs. While the settlement will result in lower emissions, these lower emissions will not occur in the time frame the RFP Plans cover.

5. New Vehicle Standards—Tier 2

On February 10, 2000, EPA promulgated more stringent motor vehicle emission standards and low sulfur gasoline limits as part of the Federal Motor Vehicle Control Program (FMVCP). These are referred to as the Tier 2/Low Sulfur Gasoline Program and

go into effect beginning in 2004. The benefit from these regulations increase as new vehicles replace old ones. New Jersey has accounted for the emissions reduction effects of Tier 2/Low Sulfur Gasoline Program in its most recent RFP Plans.

6. Nonroad Measures

New Jersey has included emission reductions from several promulgated federal regulations: spark ignition small engine, Phase I and II; new gasoline spark ignition marine engines; nonroad compression ignition engines (Tiers 1, 2 and 3); locomotives and locomotive engines; and commercial marine diesel engines. The benefit from these regulations increase as new engines replace old ones. New Jersey used EPA's National Nonroad Emissions Model to calculate the emissions and benefits from the first three categories, for the last two categories the regulatory support documents were used from EPA's rulemakings to calculate the emission reduction benefit. The benefit from Reformulated Gasoline Phase II in nonroad gasoline engines is included in these emission calculations.

New Jersey based its emissions reductions from the first three categories using EPA's draft NONROAD computer model. New Jersey believed this method was more accurate than allocating national emissions and reductions for each engine type to each of New Jersey's nonattainment areas. EPA has determined that New Jersey's methods for predicting emissions benefits from this source category are acceptable. However, New Jersey should be aware that it may need to recalculate the nonroad emission inventory once the model has been officially released for use. Recalculation would be necessary if, at that time, there is reason to believe that results predicted by the final NONROAD model would affect the outcome of the RFP Plans conclusions. This is because EPA guidance does not recommend use of draft models for SIP purposes.

F. Summary of 2002, 2005 and 2007 RFP Plans Evaluation

New Jersey has identified the control measures necessary for achieving the required emission reductions and all the measures have been adopted and implemented or adopted and scheduled for implementation. EPA is proposing to find that the RFP Plans contain sufficient control measures as identified in Table 4 to achieve the required emission reductions. EPA proposes to approve these emission reduction credits as part of the RFP Plans.

G. How Do the RFP Plans Relate to the 1-Hour Ozone Attainment Demonstration?

New Jersey's attainment demonstration was based on photochemical grid modeling and demonstrated that NO_x reductions are beneficial in reducing ozone concentrations. The RFP Plans demonstration contained the same control measures included in the 1-hour ozone attainment demonstrations, dated August 31, 1998. The projected controlled emission levels will decrease further when the State adopts the measures needed to meet the additional emissions reduction which EPA identified in its December 16, 1999 proposed approval of the 1-hour ozone attainment demonstrations. In addition, because New Jersey historically applies control measures statewide, additional emission reductions from three counties not included in the two severe nonattainment areas will lower ozone precursor emissions transported into the severe nonattainment areas.

H. How Did New Jersey Address the Contingency Measure Requirement?

The New Jersey submittal also addresses contingency measures required under the Act. Section 172(c)(9) of the Act requires states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve RFP or fails to attain the NAAQS within the time-frames specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the state or by the EPA Administrator upon failure by the state to: meet RFP emission reduction milestones; attain the NAAQS by the required deadline; or meet other applicable milestones of the Act. EPA's policy, as provided in the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for 3% reduction of the 1990 adjusted baseline

emissions beyond the reduction required for a particular milestone year. While all contingency measures must be fully adopted rules or measures, states can use the measures in two different ways. A state can choose to implement contingency measures before the milestone deadline.

Alternatively, a state may decide not to implement a contingency measure until an area has actually failed to achieve a RFP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure. The General Preamble indicates that the 3% reduction "buffer" must be maintained through each RFP milestone. Therefore, New Jersey must demonstrate that the two severe nonattainment areas have enough contingency measure reductions in addition to the reductions claimed for the 2002, 2005 and 2007 RFP Plans.

Consistent with EPA guidance, New Jersey used a combination of excess VOC and NO_x emission reductions (0.3% VOC and 2.7% NO_x) resulting from the implementation of New Jersey's Subchapter 24, "Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products" and Subchapter 31, "Ozone Transport Commission NO_x Budget Program" to provide for the contingency reductions.

The New Jersey RFP Plans achieve, in addition to the RFP ozone precursor reduction, a 3% reduction in VOC and NO_x through creditable control measures. For this reason, the contingency measure portion of the 2002, 2005 and 2007 RFP Plans satisfy the contingency measure requirements of the Act. EPA proposes to approve the contingency measure portion of the SIP revision.

IV. Are Conformity Budgets Contained in These Plans and Are They Approvable?

The tables below summarize New Jersey's Emission Budgets contained in the April 11, 2001 SIP revision. They are based on 1999 vehicle registration data. On June 1, 2001 (66 FR 29797), EPA found these budgets to be adequate for conformity purposes effective June 18, 2001.

For the South Jersey Transportation Planning Organization (SJTPO) and Delaware Valley Regional Planning Commission (DVRPC) the 2002 budgets are new budgets based on the RFP Plans, while the 2005 budgets are revised attainment year budgets. For the North Jersey Transportation Planning Authority (NJTPA) the 2002 budgets are new budgets based on the RFP Plans,

the 2005 budgets are revised budgets also based on the RFP Plans, while the 2007 budgets are revised attainment year budgets.

By virtue of proposing approval of the 2002, 2005 and 2007 RFP Plans, EPA is

also proposing approval of the motor vehicle emissions budgets for VOC and NO_x. In addition, since New Jersey's 2005 RFP Plan for the Trenton NAA and 2007 RFP Plan for the Northern New

Jersey NAA are consistent with the 1-hour attainment demonstrations, which EPA proposed to approve on December 19, 1999, these emission budgets also represent attainment year budgets.

TABLE 6.—NEW JERSEY TRANSPORTATION CONFORMITY BUDGETS

Transportation planning area	2002		2005		2007	
	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)
North Jersey Transportation Planning Authority (NJTPA)	140.15	240.19	98.11	187.70	93.20	175.51
South Jersey Transportation Planning Organization (SJTPO)	17.49	33.02	13.36	26.42	¹ n/a	n/a
Delaware Valley Regional Planning Commission (DVRPC)	55.28	73.05	38.03	55.62	n/a	n/a

¹ Not applicable.

TABLE 7.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSION BUDGETS

	VOC tons/year	NO _x tons/year
1990 Baseline	1,112	1,038
1996	1,186	1,107
1999	1,223	1,142
2002	1,405	875
2005	1,406	884

On April 11, 2000, New Jersey provided an enforceable commitment to revise its attainment year motor vehicle emission budgets within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. The revised budgets that will result from MOBILE6 will be based on a more appropriate estimation of the benefits from EPA's Tier 2 vehicle and fuel standards. New Jersey also provided an enforceable commitment to revise its attainment year motor vehicle emission budgets if additional mobile source control measures are adopted.

Since New Jersey has committed to revise the emissions budgets which EPA is proposing to approve today, EPA's approval of the emissions budgets will last only until adequate revised budgets are submitted pursuant to the above commitments. The revised budgets will apply as soon as they are found adequate. It is not necessary to wait until the revised budgets are approved as revisions to the respective Plans because EPA recognizes that if the revised budgets are revised according to MOBILE6, they will be based on a more technical understanding of motor vehicle emission control programs and therefore more appropriate than the originally approved budgets for conformity purposes. See EPA's July 28, 2000 supplemental proposal (65 FR 46383) for the ozone attainment

demonstrations for more background information.

Therefore, EPA finds that these budgets are consistent with the control measures included in the RFP Plans and attainment demonstrations. EPA is proposing to approve New Jersey's emission budgets. In the case of the attainment budgets, this approval will remain in effect only until the State submits and EPA finds adequate revised budgets meeting the commitments New Jersey has made with respect to submission of mobile source and shortfall measure budgets.

V. Are New Jersey's RFP Plans Consistent With EPA's Proposed Approval of New Jersey's 1-Hour Ozone Attainment Demonstration?

On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour ozone attainment demonstrations SIP. However, EPA proposed that New Jersey's attainment demonstrations needed additional emission reductions in order to attain the 1-hour ozone standard with sufficient surety. EPA also identified the need for several other enforceable commitments. On April 26, 2000, New Jersey submitted to EPA the necessary enforceable commitments, including the one to adopt additional measures by October 31, 2001 which would achieve the additional emission reductions EPA identified. New Jersey has been an active participant in the

Ozone Transport Commission's process of developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. EPA proposes to approve the enforceable commitments that New Jersey submitted on April 26, 2000, and that New Jersey has met the conditions EPA identified in the December 16, 1999 **Federal Register**.

VI. What Are EPA's Conclusions?

EPA has evaluated these submittals for consistency with the Act, applicable EPA regulations, and EPA policy. EPA proposes approval of New Jersey's: 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories; 2002, 2005 and 2007 RFP Plans; transportation conformity budgets; contingency measures; and the enforceable commitments for the 1-hour ozone attainment demonstration.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does 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), nor will it 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), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (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 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01-22908 Filed 9-11-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KY-T5-2001-01; FRL-7055-3]

Clean Air Act Proposed Full Approval of Operating Permit Program; KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit program of the Kentucky Department of Environmental Protection. This program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Kentucky's operating permit program on November 14, 1995. Kentucky revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions and other program changes made since the interim approval was granted.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by EPA on or before October 12, 2001.

ADDRESSES: Written comments on the program revisions discussed in this action should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Copies of the Kentucky submittals and other supporting documentation used in developing the proposed full approval

are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Interested persons wanting to examine these documents, which are contained in EPA docket file numbered KY-T5-2001-01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562-9124 or pierce.kim@epa.gov/.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions: What is the operating permit program? What is being addressed in this document? What are the program changes that EPA proposes to approve? What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: "Major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_x), or particulate matter (PM₁₀); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the