

**40 CFR Part 52**

[Region 2 Docket No. NJ16-2-160, FRL-5671-6]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a request by New Jersey to revise its State Implementation Plan (SIP) for ozone. This revision of the SIP was submitted by the State to satisfy Clean Air Act (the Act) requirements for adoption of rules for the application of reasonably available control technology (RACT) to sources that emit oxides of nitrogen (NO<sub>x</sub>) in the entire State. EPA is approving Subchapter 19, "Control and Prohibition of Air Pollution From Oxides of Nitrogen."

**EFFECTIVE DATE:** This rule will be effective February 26, 1997.

**ADDRESSES:** Copies of the State submittal 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

Environmental Protection Agency, Air  
and Radiation Docket and Information  
Center, Air Docket (6102), 401 M  
Street, S.W., Washington, D.C. 20460

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** On November 15, 1993, New Jersey submitted to EPA as a revision to its SIP, Subchapter 19, "Control and Prohibition of Air Pollution From Oxides of Nitrogen," of Chapter 27, Title 7 of the New Jersey Administrative Code with an effective date of December 20, 1993. Subchapter 19 contains the NO<sub>x</sub> RACT requirements for the State. The SIP revision was submitted to satisfy section 182(f) of the Act which requires states with ozone nonattainment areas classified moderate or above or with

areas in the ozone transport region to apply RACT to major stationary sources of NO<sub>x</sub>. On October 2, 1995, EPA published in the Federal Register (60 FR 51379) a Notice of Proposed Rulemaking (NPR) proposing to approve Subchapter 19 and provided for a 30-day public comment period. EPA received no comments regarding the NPR.

Subsequently, national policy discussions regarding the approvability of state regulations that contain generic provisions in establishing RACT requirements for major sources of NO<sub>x</sub> and/or volatile organic compounds (VOC) emissions resulted in additional Agency guidance. Generic provisions are those portions of a regulation which require the application of RACT to an emission point, but the degree of control is not specified in the rule and is to be determined on a case-by-case basis taking technological and economic factors into consideration. Under the Act, these individually determined RACT limits would then need to be submitted by a state as a SIP revision for EPA approval. On November 7, 1996, EPA issued a policy memorandum providing additional guidance for approving regulations which contain these "generic provisions." (Sally Shaver memorandum to EPA Division Directors, "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements").

EPA policy allows for the full approval of state generic RACT rules prior to EPA approval of all major source RACT determinations provided an analysis is completed that concludes that the remaining source RACT determinations involve a de minimis level of NO<sub>x</sub> emissions. Such an approval does not exempt the remaining sources from RACT; rather it is a de minimis deferral of the approval of these case-by-case RACT limits. EPA has evaluated data provided by New Jersey and has determined that two percent of the NO<sub>x</sub> emissions subject to RACT controls have not yet been regulated. EPA believes this amount to be de minimis. The two percent de minimis level is based on State submitted SIP revisions covering 22 facilities (out of approximately 40) whose RACT limits have been approved by EPA in a direct final action (See 62 FR 2581, January 17, 1997). New Jersey is preparing SIP revision requests for the approximate 20 remaining sources which account for the remaining two percent of NO<sub>x</sub> emissions. While EPA has published a direct final approval for 22 source specific SIP revisions and does not anticipate adverse comments,

even if the effective date is delayed EPA believes that full approval is appropriate because the unregulated emissions still do not exceed a de minimis threshold. Therefore, EPA has determined that New Jersey's NO<sub>x</sub> RACT regulation conforms with EPA's policy regarding the approval of generic RACT provisions or rules, thereby allowing EPA to grant full approval to Subchapter 19.

As stated above, full approval of Subchapter 19 will not relieve sources of the obligation to develop, submit and implement RACT level controls. Nor will it relieve New Jersey of the obligation to ensure that all sources within the State comply with the NO<sub>x</sub> RACT requirements of the Act by adopting and implementing emission limitations. The approval of Subchapter 19 requires that all major sources of NO<sub>x</sub> must comply with RACT and this requirement is enforceable by EPA as well as citizen groups under Section 304 of the Act. If EPA determines that the regulated sources and the State are not complying with the requirement to adopt RACT, EPA could issue a SIP call or a finding of non-implementation of the SIP.

#### Conclusion

EPA has evaluated Subchapter 19 for consistency with the Act's provisions, EPA regulations and policy and has determined this regulation is fully approvable. Therefore, this rule makes final the action proposed at 60 FR 51379 dated October 2, 1995.

#### Administrative Requirements

##### Executive Order 12866

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

##### Regulatory Flexibility Act

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

entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that a state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

**Unfunded Mandates**

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the

private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional annual costs to state, local, or tribal governments, or to the private sector, result from this action.

**Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**Petitions for Judicial Review**

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 31, 1996.  
William J. Muszynski,  
*Deputy Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart FF—New Jersey**

2. Section 52.1570 is amended by adding new paragraph (c)(60) to read as follows:

**§ 52.1570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(60) A revision to the New Jersey State Implementation Plan (SIP) for ozone for adoption of rules for application of reasonably available control technology (RACT) for oxides of nitrogen (NO<sub>x</sub>) dated November 15, 1993, submitted by the New Jersey Department of Environmental Protection and Energy.

(i) Incorporation by reference:

(A) Title 7, Chapter 27, Subchapter 19, of the New Jersey Administrative Code entitled "Control and Prohibition of Air Pollution from Oxides of Nitrogen," effective December 20, 1993.

(ii) Additional information:

(A) November 15, 1993 letter from Jeanne Fox, NJDEPE, to William J. Muszynski, EPA, requesting EPA approval of Subchapter 19.

3. Section 52.1605 is amended by adding a new entry for Subchapter 19 under the heading "Title 7, Chapter 27" to the table in numerical order to read as follows:

**§ 52.1605 EPA—approved New Jersey regulations.**

State regulation	State effective date	EPA approved date	Comments
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Title 7, Chapter 27			
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Subchapter 19, "Control and Prohibition of Air Pollution from Oxides of Nitrogen."	Dec. 20, 1993 .....	[January 27, 1997 and FR page citation]	
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## NATIONAL TRANSPORTATION SAFETY BOARD

### 49 CFR Part 831

#### Accident/Incident Investigation Procedures

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rule.

**SUMMARY:** The Board is updating its regulations on accident and incident investigation practices to reflect current operations and organization.

**DATES:** The new rules are effective February 26, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jane F. Mackall, (202) 314-6080.

**SUPPLEMENTARY INFORMATION:** The majority of the current rules at 49 CFR Part 831 have not been updated since 1988. The changes adopted here for the most part reflect current accident and incident investigation practices. Because these rule changes affect only rules of agency organization, procedure, or practice, notice and comment procedures are not required and are not provided here. 5 U.S.C. 553(b)(B). Major changes to the rules include the following: (1) the Board's wreckage release form (6120.15) will be used, when needed, in all accident investigations, not just aviation investigations; (2) participation in accident investigations of individuals in legal positions has been clarified; (3) the requirement that all party representatives in aviation investigations sign the STATEMENT OF PARTY REPRESENTATIVES TO NTSB INVESTIGATION has been codified; (4) the Board member's role at accident sites has been clarified; (5) new sections have been added to address Trade Secrets Act and voluntary data submission issues; and (6) our policy regarding submissions received after a matter has been calendared by the Board for a meeting has been codified.

#### List of Subjects in 49 CFR Part 831

Aviation safety, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

### PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

1. The Authority citation for Part 831 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*);

Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*).

2. Section 831.2 is revised to read as follows:

#### § 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct, and control of all accident and incident investigations (see § 830.2 of this chapter) within the United States, its territories and possessions, where the accident or incident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an investigation involving civil or public aircraft (as specified in § 830.5) on the one hand, and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents/incidents that occur outside the United States, and which involve civil aircraft and/or certain public aircraft, when the accident/incident is not in the territory of another country (*i.e.*, in international waters).

(2) Certain aviation investigations may be conducted by the Federal Aviation Administration (FAA), pursuant to a "Request to the Secretary of the Department of Transportation to Investigate Certain Aircraft Accidents," effective February 10, 1977 (the text of the request is contained in the appendix to part 800 of this chapter), but the Board determines the probable cause of such accidents or incidents.<sup>1</sup> Under no circumstances are aviation investigations where the portion of the investigation is so delegated to the FAA by the Board considered to be joint investigations in the sense of sharing responsibility. These investigations remain NTSB investigations.

(3) The Board is the agency charged with fulfilling the obligations of the United States under Annex 13 to the Chicago Convention on International Civil Aviation (Eighth Edition, July 1994), and does so consistent with State Department requirements and in coordination with that department. Annex 13 contains specific requirements for the notification, investigation, and reporting of certain incidents and accidents involving international civil aviation. In the case of an accident or incident in a foreign state involving civil aircraft of U.S. registry or manufacture, where the foreign state is a signatory to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is

<sup>1</sup> The authority of a representative of the FAA during such investigations is the same as that of a Board investigator under this part.

responsible for the investigation. If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13 to the Chicago Convention, or if the accident or incident involves a public aircraft (Annex 13 applies only to civil aircraft), the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

(b) *Surface.* The Board is responsible for the investigation of: railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see part 840 of this chapter); major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions (see part 850 of this chapter<sup>2</sup>); highway accidents, including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; and pipeline accidents in which there is a fatality, significant injury to the environment, or substantial property damage.

(c) *Other Accidents/Incidents.* The Board is also responsible for the investigation of an accident/incident that occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. This authority includes, but is not limited to, marine and boating accidents and incidents not covered by part 850 of this chapter, and accidents/incidents selected by the Board involving transportation and/or release of hazardous materials.

3. Section 831.3 is revised to read as follows:

#### § 831.3 Authority of Directors.

The Director, Office of Aviation Safety, or the Director, Office of Surface Transportation Safety, subject to the provisions of § 831.2 and part 800 of this chapter, may order an investigation into any accident or incident.

4. Section 831.4 is revised to read as follows:

#### § 831.4 Nature of Investigation.

Accident and incident investigations are conducted by the Board to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof. These results are then used to ascertain measures that would best tend to prevent similar accidents or incidents

<sup>2</sup> Part 850 also governs the conduct of certain investigations in which the Board and the Coast Guard participate jointly.