ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ32–183a, FRL–6174–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of four (4) revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. These revisions consist of fifteen (15) source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) from various sources in New Jersey. This direct final rule approves the source-specific RACT determinations that were made by New Jersey in accordance with provisions of its regulation. This action is being taken in accordance with section 110 of the Clean Air Act (the Act).

DATES: This direct final rule is effective on December 21, 1998 without further notice, unless EPA receives adverse comment by November 19, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All written comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals 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 or Richard Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the Act. The EPA described section 182(f) requirements in a Notice entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (NO_X Supplement) which was published on November 25, 1992 (57 FR 55620). For detailed information on the NO_X requirements, refer to the NO_X Supplement and to additional NO_X guidance memoranda released subsequent to the NO_X Supplement.

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

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

Section 182(b)(2) of the Act requires submissions, by November 15, 1992, of SIP revisions which provide for implementation of RACT as expeditiously as practicable but no later than May 31, 1995, where for a source category EPA has issued a control technique document (CTG) before November 15, 1990, or for all major stationary sources that the Agency has not issued a CTG. For sources covered by a CTG between November 15, 1990 and the date of attainment, section 182(b)(2) requires SIP revisions within the period set forth by the Administrator in issuing the CTG document.

EPA did not issue any CTGs for major stationary sources of NO_X either before or after November 15, 1990. Therefore, section 182(b)(2) of the Act requires submission, by November 15, 1992, of all SIP revisions which provide for implementation of RACT on major stationary sources of NO_X for all ozone nonattainment areas classified moderate or above and for all ozone transport regions. New Jersey, which is within the Northeast ozone transport region established by section 184(a) of the Act, is required to adopt and implement RACT on major stationary sources. Sections 182(f) and 184(b) of the Act require the application of NO_X RACT requirements Statewide.

B. New Jersey's NO_X RACT Regulation

On November 15, 1993, New Jersey submitted to EPA, as a revision to the SIP, subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 is entitled ''Control and Prohibition of Air Pollution From Oxides of Nitrogen.'' This subchapter provides the NO_X RACT requirements for New Jersey and was effective on December 20, 1993. New Jersey submitted subchapter 19 to EPA, as a revision to the SIP, on November 15, 1993 and on October 2, 1995, the EPA proposed full approval (60 FR 51379). On January 27, 1997, the EPA final action on subchapter 19 was published in the **Federal Register** (62 FR 3804).

On March 24, 1995, New Jersey adopted amendments to Subchapter 19 and submitted them to EPA for approval as a SIP revision on June 21, 1996. On September 26, 1996, the EPA found these amendments administratively and technically complete. EPA expects to publish, in the near future, a proposed action on the June 1996 submittal.

C. Section 19.13—Facility Specific NO_X Emission Limits

Section 19.3 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular facility item, equipment or source operation. This procedure is applicable in two situations: (1) Except for non-utility boilers, if the major NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2 which has the potential to emit more than 10 tons of NO_X per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure requires either submission of a NO_X control plan if specific emission limitations do not apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/

operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission rate must consider control technologies (e.g., low NO_X burners) and alternative control strategies (e.g., emissions averaging, seasonal fuel switching to natural gas, and repowering). Also, in either case, subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO_X control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

D. Section 19.21—Phased Compliance Through Repowering

Section 19.21 of New Jersey's regulation allows attainment of compliance through repowering. Under subchapter 19, repowering is defined as the permanent cessation of steam generator operations replaced by either the installation of a new combustion source or the purchase of heat or power from a new combustion source located in New Jersey.

Section 19.21 requires that a source owner who requests compliance through repowering: (1) Enter into an enforceable commitment with the State to repower, (2) submit an analysis that defines RACT for the interim period between May 31, 1995 and the date the unit will be repowered, (3) specify a date, which can be no later than May 31, 1999, by which the unit will be repowered, (4) include appropriate milestones for the repowering project, (5) meet applicable SIP and Federal requirements upon the repower date, and (6) ensure that the repowering commitment is federally enforceable.

Section 19.21 also requires that a source establish emission limits using advanced control techniques and commit to meet these limits once the source is repowered. The maximum allowable NO_X emissions rate, expressed in pounds per million BTUs (lbs/MM BTU), for repowered utility boilers ranges from 0.1 to 0.2 depending upon the type of boiler and the type of fuel. Section 19.21 allows repowering of all combustion sources and replaces section 19.14(c) which allowed repowering only for utility boilers.

E. Procedural History of Submittals

Prior to adoption of the fifteen source-specific RACT revisions discussed in this Notice, New Jersey published proposed limitations for each source specific RACT determination in local newspapers and provided thirty (30) days for public comment and an opportunity to request a public hearing. New Jersey reviewed and responded to all comments. The State then determined that the proposed NO_X control plans, alternative maximum allowable emission rates and repowering plan conform with the provisions of sections 19.13 or 19.21 of New Jersey's regulation. These RACT determinations were made during 1994, 1995, 1996 and 1997.

After New Jersey made each determination it issued letters of approval to each owner. These letters included and incorporated either an attached conditions of approval document (COAD) or, in one case, an attached facility wide permit (FWP). Each COAD or FWP contains conditions consistent with subchapter 19. These conditions are considered approved permit conditions which are fully enforceable by the State. Each COAD and FWP is identified in the ''Incorporation by reference'' section at the end of this document.

New Jersey submitted the fifteen source-specific SIP revisions to EPA on June 18, 1996, July 10, 1996, December 17, 1996, and May 2, 1997.

F. EPA Analysis of State Submittals

After reviewing the submittals, EPA found them all administratively and technically complete. For each source discussed in this document, EPA determined that the New Jersey letter of approval identifies NO_X requirements which represent RACT for the source. The conditions contained in the COADs and FWP include, for example, emission limits, work practice standards, and testing, monitoring, and record keeping/reporting requirements. These conditions are consistent with the NO_X RACT requirements specified in subchapter 19 and conform to EPA NO_X RACT guidance. Please note there may be other requirements, such as adequate monitoring, which States and sources will need to provide for, through the Title V permitting process. Therefore, EPA is approving New Jersey's fifteen source-specific SIP revision submittals dated June 18, 1996, July 10, 1996, December 17, 1996 and May 2, 1997.

EPA's evaluation of each RACT submittal is detailed in a document dated June 8, 1998, entitled ''Technical Support Document—NO_X RACT Source-Specific SIP Revisions-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.

This document includes a summary of each RACT submittal. These summaries are organized into three groups as follows: I. ''Facility-Specific NO_X Emission Limits''—nine major NO_X facilities that contain a source operation or item of equipment for which New Jersey has not established an emission limit pursuant to subchapter 19; II. ''Alternative NO_X Emission Limits''—five major NO_X facilities that contain a source operation or item of equipment of a category listed in section 19.2 for which an owner or operator seeks approval of a RACT emission limit that is different from the one established in subchapter 19; III. ''Phased Compliance Through Repowering''—one major NO_X facility where an owner or operator seeks approval of a plan pursuant to section 19.21 for phased compliance through repowering of a specific source.

This document takes action only on the permitted emission rates and conditions of approval related to emissions of NO_X; action is not being taken on any other pollutants which may be permitted by New Jersey with regard to these sources.

I. Facility-Specific NO_X Emission Limits

A summary of EPA's analysis of each source granted a facility specific NO_X emission limit by New Jersey is as follows.

1. The Geon Company

The Geon Company manufactures polyvinyl chloride resin and operates two direct-fired dryers at its facility in Pedricktown, Salem County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the facility's dryers are as follows: (1) Combust only natural gas from May 1 through September 30 unless natural gas becomes unavailable, (2) combust only natural gas as the primary fuel and propane as the emergency back up fuel, (3) limit annual propane fuel combustion to ninety days, and (4) a NO_X emission limit of 11.95 tons per year (TPY) for dryer DR–1H and 13.94 TPY for dryer DR–2P.

2. The PQ Corporation/Industrial Chemicals

The PQ Corporation/Industrial Chemicals operates a Sodium Silicate Furnace at its facility located in Avenel, Middlesex County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the facility's furnace are as follows: (1) Weekly burner tuneups, (2) control daily excess oxygen level to no more than 3%, (3) when burning oil, a NO_X emission limit of 13.3 pounds per hour (lbs/hr) or the highest value obtained from a stack test, whichever is lower, (4) when burning natural gas, a NO_X emission limit of 29.3 lbs/hr or the highest value obtained from a stack test,

whichever is lower, and (5) daily maximum capacity of 128 tons of molten sodium silicate.

3. Air Products and Chemicals, Inc.

Air Products and Chemicals, Inc., owns and operates a hazardous waste incinerator at its facility in Paulsboro, Gloucester County. The incinerator processes liquid wastes generated on-site and also serves as an afterburner for 46 on-site sources. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the incinerator are as follows: (1) Implementation of good combustion technology consisting of high intensity burners, steam injection, and modern instrumentation to control excess air, and (2) a NO_X emission limit of 15.7 lbs/hr (68.8 TPY).

4. Stony Brook Regional Sewerage Authority

The Stony Brook Regional Sewerage Authority owns and operates two multiple hearth type incinerators to burn sewage sludge from its wastewater treatment plant located in Princeton, Mercer County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for each incinerator are as follows: (1) Combust natural gas as auxiliary fuel during the ozone season (May 1–September 15) unless natural gas is unavailable, (2) combust No 2 oil when natural gas is unavailable during the ozone season for a period not to exceed 48 hours during any calendar month, and (3) a NO_X emission limit of 22 lbs/hr for each incinerator.

After switching to natural gas, the facility was to conduct stack tests and submit the results of those tests by a date no later than May 31, 1996. New Jersey may establish a lower facility NO_X emission limit after review of the stack test results.

5. Township of Wayne, Mountain View Water Pollution Control Facility

The Township of Wayne, Mountain View Water Pollution Control Facility owns and operates two multiple hearth type sewage sludge incinerators to burn sewage sludge from its wastewater treatment plant located in Wayne, Passaic County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the incinerators are as follows: (1) Combust natural gas during the ozone season, and (2) a NO_X emission limit of 12.0 lbs/hr for each incinerator. New Jersey may establish a lower facility NO_X emission limit after review of stack test results conducted after the planned fuel switch to natural gas.

6. Atlantic States Cast Iron Pipe Company

The Atlantic States Cast Iron Pipe Company produces iron pipe from scrap steel and operates an iron melting cupola and an annealing oven in Phillipsburg, Warren County. The facility's NO_X emissions result from the combustion of coke in the iron melting cupola and the combustion of natural gas in the annealing oven. For the cupola, the facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements are as follows: (1) Continued use of low excess air and oxygen enrichment technologies, (2) a NO_X emission limit of 0.188 lbs/MM BTU, and (3) an annual operations limit of 3600 hours. For the annealing oven, the facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements are as follows: (1) An annual adjustment to the oven combustion process, (2) a NO_X emission limit of 0.15 lbs/MM BTU, and (3) an annual fuel consumption limit of 271 million standard cubic feet (SCF) of natural gas.

7. Warren Energy Resource Company, L.P.

The Warren County Resource Recovery Facility is a municipal waste-to-energy facility operated by Warren Energy in Oxford Township, Warren County. The facility includes two independent combustion/steam generation units nominally rated at 200 tons per day of solid waste each. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements are as follows: (1) Use of staged combustion and good combustion practices which are already standard operating practices at the facility as a result of 1986 Best Available Control Technology determination, (2) a NO_X emission limit of 45 lbs/hr/unit, and (3) a concentration limit of 300 parts per million, for any 3-hour block period.

8. Hercules Incorporated

Aqualon, a division of Hercules Incorporated, owns and operates a nitrocellulose manufacturing facility in Parlin, Middlesex County. NO_X emissions originate from Nitric Acid Concentrators, a Nitration System, and an Open Pit Burner. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements are as follows: (1) Continued use of wet scrubbing control systems for the Acid Concentrators and Nitration System and continued operational procedures for the Open Pit Burner, and (2) NO_X emission limits for the Acid Concentrators, Nitration System and Open Pit Burner of 23.48 TPY, 242 TPY and 76.5 TPY, respectively.

9. U.S. Department of Navy, Naval Air Warfare Center Aircraft Division

The United States Department of Navy operates the Naval Air Warfare Center, Aircraft Division, in Trenton, Mercer County. The jet engine test facility is a test, evaluation and research center for aircraft propulsion systems and accessories. Ten test cells are at the facility for evaluating engines of various size. The facility's RACT analysis concluded, and New Jersey agreed, that there are no NO_X control technologies that are technically feasible for the aircraft test engines and that the RACT requirement for each test cell is a NO_X emission limit between 2 and 300 TPY depending on the size and type of engine tested. The facility was scheduled for operational closure in September 1997.

II. Alternative NO_X Emission Limits

A summary of EPA's analysis of each source granted an alternative NO_X emission limit by New Jersey is as follows.

10. Atlantic Electric Company—Deepwater Generating Company

Atlantic Electric Company operates Boiler No. 8, which is a coal-fired, dry-bottom, face-fired utility boiler, at the Deepwater Generating Station in Pennsville, Salem County. Subchapter 19 does not address required limits during abnormal circumstances when this boiler needs to cofire coal with either fuel oil or natural gas. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for Boiler No. 8 are as follows: (1) continued use of Low NO_X Burners (LNB) and Overfire Air to control NO_X emissions, (2) a NO_X emission limit of 0.45 lbs/MM BTU during cofiring of coal with either fuel oil or natural gas, and (3) an annual operating limit of 1500 hours when cofiring.

11. U.S. Generating Company—Carney's Point Generating Plant

The U.S. Generating Company operates a cogeneration facility in Carney's Point, Salem County. Included at the facility is a fuel oil fired Auxiliary Boiler (package type water-tube boiler with economizer) which is used to produce process steam when the main coal fired boilers are out of service. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the Auxiliary Boiler are as follows: (1) An annual adjustment

to the combustion process, (2) continued use of LNB in combination with Flue Gas Recirculation (FGR), (3) an alternative NO_X emission limit of 0.17 lbs/MM BTU firing No.2 fuel oil, and (4) an annual operating limit of 77,000 MM BTU total heat input which is equivalent to annual operation of 1000 hours at design rate.

12. U.S. Generating Company—Logan Generating Plant

The U.S. Generating Company operates a cogeneration facility in Swedesboro, Gloucester County. Included at the facility is a fuel oil fired Auxiliary Boiler (package type water-tube boiler with economizer), which is used to produce process steam when the main coal fired boiler is out of service. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for the Auxiliary Boiler are as follows: (1) an annual adjustment to the combustion process, (2) continued use of LNB/FGR, (3) an alternative NO_X emission limit of 0.17 lbs/MM BTU firing No.2 fuel oil, and (4) annual operating limit of 77,000 MM BTU total heat input which is equivalent to an annual operation of 1000 hours at design rate.

13. Schering Corporation

The Schering Corporation owns and operates a heat recovery steam generator (HRSG), equipped with a duct burner that fires natural gas, at their U–7 cogeneration facility in Union, Union County. When operating under emergency circumstances in a fresh air firing (FAF) mode, the HRSG/duct burner cannot meet Subchapter 19's presumptive NO_X RACT limit. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements for this generator during the FAF mode are as follows: (1) Annual combustion process adjustments, (2) continued use of the LNB, and (3) an alternative NO_X emission limit of 0.183 lbs/MM BTU during natural gas combustion. The State may establish a lower NO_X emission limit after review of the stack test results which are to be submitted to New Jersey by May 31, 1996.

14. Jersey Central Power & Light Company (JCP&L)

JCP&L operates four (Units 4,5,6,7) combined cycle combustion turbines (firing natural gas and No.2 fuel oil) with No.2 fuel oil fired HRSG/duct burners at its Gilbert Generating Station in Holland Township, Hunterdon County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT requirements are as follows: (1) Water injection to each turbine, (2) annual adjustments to the combustion process, (3) alternative NO_X emission limits for each gas or No. 2 oil fired turbine of 0.17 lbs/MM BTU and 0.26 lbs/MM BTU respectively, (4) an annual maximum use of natural gas for each turbine of 3.2×10^9 SCF; (5) an annual maximum use of No. 2 fuel oil for each turbine of $2{,}867\times10^3$ gallons, (6) for each gallon of No. 2 fuel oil used, a reduction in the annual natural gas consumption of 217 scf is required, and (7) no fuel combustion in the HRSG.

III. Phased Compliance Through Repowering

A summary of EPA's analysis of each source granted phased compliance through repowering by New Jersey is as follows.

15. Elizabethtown Water Company (EWC)

EWC owns and operates two identical lean burn internal combustion diesel engines, 1133 horsepower each, at its water treatment and distribution facility, Raritan-Millstone plant, in Bridgewater, Somerset County. The two engines are 30 years old and their remaining useful life is limited, therefore EWC proposed to repower the engines to comply with NO_X RACT. The State's approved repowering plan requires the following: (1) Replacing the engines with ones which incorporate advances in the art of air pollution control, (2) installing the replacement engines in accordance with the milestones specified in a federally enforceable agreement, (3) completing the repowering by June 1, 1998, and (4) after repowering, replacement units are to meet all Federal, State, SIP, and New Source Review requirements. The new engines will emit about 90% less NO_X than the engines they will replace.

The repowering plan further requires that, during the interim period of May 1, 1995 and June 1, 1998, NO_X RACT requirements for each of the two existing diesel engines are as follows: (1) Switch from diesel oil to No. 2 oil, (2) annually perform combustion process adjustments, (3) operate the engines under retarded timings, (4) limit emissions to 8.6 grams of NO_X per horsepower-hour, and (5) install continuous emission monitors and recorders in accordance with section 19.18.

G. Final Action

The EPA is approving the permitted conditions described above as RACT for the control of NO_X emissions from the sources identified in the fifteen source-specific SIP revisions.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve these same fifteen source-specific SIP revisions. This final rule will be effective December 21, 1998 without further notice unless the Agency receive relevant adverse comments by November 19, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 21, 1998 and no further action will be taken on the proposed rule.

Administrative Requirements

Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866 entitled, ''Regulatory Planning and Review.'' The final rule is not subject to E.O. 13045 entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this

action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air 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 federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

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 December 21, 1998. 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).)

Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

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 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(64) to read as follows:

52.1570 Identification of plan.

* * * * *

(c) * * *

(64) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on June 18, 1996, July 10, 1996, December 17, 1996 and May 2, 1997.

(i) Incorporation by reference.

(A) *Conditions of Approval Documents (COAD) or Facility Wide Permit.* The following facilities have been issued COADs or facility wide permits by New Jersey:

(*1*) Geon Company's direct-fired dryers, Salem County, NJ facility wide permit dated January 30, 1997. Incorporation by reference includes only the pages with permit limits related to the dryers.

(*2*) PQ Corporation/Industrial Chemicals' Sodium Silicate Furnace,

Middlesex County, NJ COAD approval dated December 2, 1994.

(*3*) Air Products and Chemicals' Hazardous Waste Incinerator, Gloucester County, NJ COAD approval dated January 25, 1996.

(*4*) Stony Brook Regional Sewerage Authority's sewage sludge incinerators, Mercer County, NJ COAD approval dated October 27, 1995 and modified on May 16, 1996.

(*5*) Township of Wayne, Mountain View Water Pollution Control Facility's sewage sludge incinerators, Passaic County, NJ COAD approval dated September 20, 1996.

(*6*) Atlantic States Cast Iron Pipe Company's cupola and annealing oven, Warren County, NJ COAD approval dated November 22, 1994.

(*7*) Warren County Resource Recovery Facility's Municipal Waste Incinerators, Warren County, NJ COAD dated August 1, 1996.

(*8*) Hercules Incorporated's Nitration System, Acid Concentrators, and Open Pit Burner, Union County, NJ COAD dated May 1, 1996.

(*9*) US Department of Navy, Naval Air Warfare Center Aircraft Division's jet engine test cells, Mercer County, NJ COAD approval dated October 31, 1995.

(*10*) Atlantic Electric Company's Utility Boiler #8, Salem County, NJ COAD approval dated February 25, 1997.

(*11*) U.S. Generating Company—Carneys Point Generating Plant's auxiliary boiler, Salem County, NJ COAD approval dated February 2, 1996.

(*12*) U.S. Generating Company—Logan Generating Plant's auxiliary boiler, Salem County, NJ COAD approval dated February 2, 1996.

(*13*) Schering Corporation's heat recovery steam generator with duct burner, Union County, NJ COAD approval dated January 5, 1996.

(*14*) Jersey Central Power & Light Company's combined cycle combustion turbines, Hunterdon County, NJ COAD approval dated April 10, 1996.

(*15*) Elizabethtown Water Company's internal combustion engines, Somerset County, NJ COAD approval dated May 8, 1996.

(ii) Additional information—Documentation and information to support NO_x RACT facility-specific emission limits, alternative emission limits, or repowering plan in four letters addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr. dated:

(A) June 18, 1996 for four SIP revisions,
(B) July 10, 1996 for three SIP revisions,
(C) December 17, 1996 for five SIP revisions,
(D) May 2, 1997 for three SIP revisions.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6166–9]

Request for Delegation of the Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7): State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The purpose of this direct final rule is to announce that on June 19, 1998, the State of Florida, Department of Community Affairs (DCA), Division of Emergency Management (DEM), requested section 112(r) program delegation for all applicable Florida sources, except those with propane as their only regulated substance. If no adverse comments are received, EPA is approving this delegation request and this direct final rule will serve as formal delegation of the section 112(r) program for all applicable sources except those with propane as their only regulated substance. EPA is publishing a parallel proposed rule contained in the Proposed Rules section of this **Federal Register**.

DATES: This direct final rule will become effective on December 21, 1998. The direct final rule will become effective without further notice unless EPA receives no adverse written comments on or before November 19, 1998. Should the EPA receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Comments on this action should be addressed concurrently to: Michelle P. Thornton, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, patmon.michelle@epamail.epa.gov

Eve Rainey, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2140, eve.rainey@dca.state.fl.us

Copies of Florida's section 112(r) delegation request letter and accompanying documentation are available for public review during the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the addresses listed above. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before visiting day.

FOR FURTHER INFORMATION CONTACT: Michelle P. Thornton, U.S. Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air and Radiation Technology Branch, 30303–3104 (telephone 404 562–9121), patmon.michelle@ epamail.epa.gov or

Eve Rainey, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2140, (telephone 850 413–9914) eve.rainey@dca.state.fl.us

SUPPLEMENTARY INFORMATION: If no adverse comments are received by November 19, 1998, this direct final rule will automatically go into effect on December 21, 1998. Should the Agency receive such comments, it will publish a timely document withdrawing this direct final rule and will review and publish the comments in a subsequent document. If no relevant adverse comments on any provision of this direct final rule are timely filed, then it will become effective on December 21, 1998 and the State of Florida DCA/DEM will receive full delegation of authority to implement and enforce the requirements of the section 112(r) program for all applicable sources in its jurisdiction, except sources with propane as their only regulated substance.

On June 20, 1996, EPA published risk management program regulations, mandated under the accidental release prevention provisions of the Clean Air Act (CAA). These regulations require owners and operators of stationary sources subject to the regulations to submit risk management plans (RMPs) by June 21, 1999, to a central location specified by EPA. The plans will be available to State and local governments and the public. These regulations will encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment and will stimulate dialogue between industry and the public to improve accident prevention and emergency response practices.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize EPA, in part, to delegate authority to any state or local agency which submits an approvable program for implementation and enforcement of requirements for the prevention and mitigation of accidental releases of hazardous air pollutants. The State's program must contain adequate authorities, adequate resources for