

7. By adding § 229.306 to read as follows:

§ 229.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1) through (a)(3) of this Item, anything that has come to the attention of the members of the audit committee that caused the audit committee to believe that the audited financial statements included in the company's Annual Report on Form 10-K (17 CFR 249.310) for the year then ended contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information

statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

9. By amending § 240.14a-101 by adding paragraph (3) to Item 7(e) to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. *Directors and executive officers.*

* * *

(e) * * *
(3) If the registrant has an audit committee:
(i) Provide the information required by Item 306 of Regulation S-K (17 CFR 229.306).
(ii) State whether the company's audit committee has adopted a written charter.

(iii) Include a copy of the written charter, if any, as an appendix to the company's proxy statement unless a copy has been included as an appendix to the company's proxy statement within the company's past three fiscal years.

(iv)(A) For companies whose securities are listed on the New York Stock Exchange ("NYSE") or American Stock Exchange ("AMEX") or quoted on Nasdaq, if the company's Board determines in accordance with the requirements of section 303.02(D) of the NYSE's listing standards, section 121(B)(b)(ii) of the AMEX's listing standards, or section 4310(c)(26)(B)(ii) or 4460(d)(2)(B) of the National Association of Securities Dealers' ("NASD") listing standards, as applicable and as may be modified or supplemented, to appoint one director to the audit committee who is not independent (as independence is defined in Sections 303.01(B)(2)(a) and (3) of the NYSE's listing standards, section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the NASD's listing standards, as applicable and as may be modified or supplemented), disclose the nature of the relationship that makes that individual not independent and the reasons for the Board's determination. Small business issuers are not required to comply with this paragraph (e)(3)(iv)(A).

(B) For companies, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on

Nasdaq, disclose whether, if the company has an audit committee, the members are independent. In determining whether a member is independent, the company must use the definition of independence in section 303.01(B)(2)(a) and (3) of the NYSE's listing standards, section 121(A) of the AMEX's listing standards or Rule 4200(a)(15) of the NASD's listing standards, as such sections may be modified or supplemented, and state which of these definitions was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

(v) The information required by paragraph (e)(3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*), other than as provided in this Item, or to the liabilities of Section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(vi) Investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than closed-end investment companies, need not provide the information required by this paragraph (e)(3).

* * * * *

By the Commission.

Dated: October 7, 1999.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-26791 Filed 10-13-99; 8:45 am]

BILLING CODE 8010-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ36-1-196, FRL-6457-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to conditionally approve New Jersey's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New Jersey's portion of the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding, which includes a regional nitrogen oxides budget and allowance (NO_x Budget)

trading program that will significantly reduce NO_x emissions generated within the Ozone Transport Region. Today's action proposes a conditional approval of New Jersey's regulations which implement Phase II and Phase III of the NO_x Budget Trading Program to reduce NO_x, and intends to help meet the national ambient air quality standard for ozone. However, if New Jersey corrects the deficiency discussed in today's proposed action between the time of today's proposed action and a final rulemaking action, and the correction is consistent with EPA's findings as discussed below, EPA proposes full approval of New Jersey's NO_x Budget Trading Program.

DATES: EPA must receive written comments on or before November 15, 1999.

ADDRESSES: Address all comments to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the state submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II 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 Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4014.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) proposes to conditionally approve the New Jersey State Department of Environmental Protection's (New Jersey's) Nitrogen Oxides Budget and Allowance (NO_x Budget) Trading Program.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION section:

- EPA's Action
- What Action is EPA Proposing Today?
- Why is EPA Proposing this Action?
- What is a Budget and Allowance Trading Program?
- What is EPA's Proposed Condition for Approval?
- How can New Jersey Get Full Approval for Their Program?

- What Guidance did EPA Use to Evaluate New Jersey's Program?
- What is EPA's Evaluation of New Jersey's Program?
- New Jersey's NO_x Budget Trading Program
- What is the Ozone Transport Commission's Memorandum of Understanding (OTC MOU)?
- Which States Signed the OTC MOU?
- What Does the OTC MOU Require?
- How Did States Meet the OTC MOU?
- How Did New Jersey Meet the OTC MOU?
- How Does New Jersey's Program Protect the Environment?
- How Will New Jersey and EPA Enforce the Program?
- When Did New Jersey Propose and Adopt the Program?
- When Did New Jersey Submit the Program to EPA and What Did it Include?
- What Other Significant Items Relate to New Jersey's Program?
- Conclusion
- Administrative Requirements

EPA's Action

What Action Is EPA Proposing Today?

EPA proposes to conditionally approve a revision to New Jersey's ozone State Implementation Plan (SIP) which New Jersey submitted to EPA on April 26, 1999. This SIP revision relates to New Jersey's new Subchapter 31 "NO_x Budget Program" regulation for New Jersey's NO_x Budget Trading Program.

Why Is EPA Proposing this Action?

- EPA is proposing this action to:
 - Give you the opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.
 - Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act).
 - Make New Jersey's NO_x Budget Trading Program federally-enforceable and available for credit toward the attainment SIP.

What Is a Budget and Allowance Trading Program?

Air emissions trading uses market forces to reduce the overall cost of compliance for sources, such as a power plant, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, also commonly referred to as a cap and trade program.

In a budget and allowance trading program, the state or EPA set a regulatory limit, or budget, on mass emissions from a specific group of sources. The state or EPA assigns or allocates allowances to the sources, authorizing emissions up to the level of the budget. Sources may sell or trade allowances with other sources, cost-

effectively complying with the budget. The budget limits the total number of allocated allowances. The total effect is to reduce emissions. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

What Is EPA's Proposed Condition for Approval?

EPA proposes to condition its approval of New Jersey's NO_x Budget Trading Program on New Jersey including a definition of a violation and of the days of a violation which more fully comports with the other state rules and EPA's guidance.

Originally, New Jersey proposed amendments to Subchapter 3 for the NO_x Budget Trading Program which included defining a violation and for determining the number of days of a violation in order to determine civil and criminal penalties. These provisions stated:

- Each ton of excess emissions is a separate violation
- For purposes of determining the number of days of a violation, each day in the control period (153 days), where there are any excess emissions, constitutes a day in violation, unless the source can demonstrate a lesser number of days, to the State's satisfaction.

However, in response to comments on the proposal, New Jersey reserved these provisions when it adopted Subchapter 31 on June 17, 1998. In the adoption documents, New Jersey said it would propose another amendment to clarify these provisions for defining violations.

The absence of these provisions in New Jersey's adopted NO_x Budget rule creates uncertainty about how the State will define a violation and determine the number of days of a violation should a source not hold enough allowances as of the allowance transfer deadline. The other states in the Ozone Transport Commission (OTC) included similar provisions in their adopted rules. Since the NO_x Budget Program is a regional program, each state rule must be substantively consistent with the other state rules, in order to ensure an allowance in one state has the same value as an allowance in another state.

This area of New Jersey's NO_x Budget Program does not fully satisfy EPA's guidance for providing enforcement mechanisms. New Jersey must revise Subchapter 3 and/or 31 to incorporate the provisions for defining a violation and determining the number of days of a violation should a source not hold enough allowances as of the allowance transfer deadline. Correcting this deficiency will clarify any confusion in how the State defines a violation and

will help to ensure consistency within the regional NO_x Budget Trading Program.

How Can New Jersey Get Full Approval for Their Program?

EPA proposes a conditional approval of New Jersey's NO_x Budget Trading Program due to the deficiency discussed in the "What is EPA's Proposed Condition for Approval?" section. EPA informed New Jersey of the deficiency in a July 8, 1999 letter. In a July 29, 1999 letter, New Jersey committed to correcting the deficiency within one year of EPA's final action.

To achieve full approval, New Jersey must correct the deficiency and submit it to EPA within one year of EPA's final action on New Jersey's NO_x Budget Trading Program SIP revision. However, if New Jersey corrects the deficiency between the time of today's proposed action and a final rulemaking action, and the correction is consistent with EPA's findings as discussed earlier, EPA proposes full approval of New Jersey's NO_x Budget Trading Program. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the April 26, 1999 submittal.

What Guidance Did EPA Use To Evaluate New Jersey's Program?

In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), that outlines requirements for establishing EIPs in cases where the Act requires States adopt EIPs to meet the ozone and carbon monoxide standards in designated nonattainment areas. There is no requirement for New Jersey to submit an EIP. However, since subpart U also contains guidance on the development of voluntary EIPs, New Jersey followed the EIP guidance in the development and submittal of its NO_x Budget Trading Program.

EPA evaluated New Jersey's NO_x Budget Trading Program to determine whether the Program meets the SIP requirements described in section 110 of the Act. EPA also evaluated the Program using the EIP of 1994 as guidance for voluntary EIPs, in coordination with other guidance documents.

What Is EPA's Evaluation of New Jersey's Program?

EPA determined New Jersey's new Subchapter 31 regulation for New Jersey's NO_x Budget Trading Program is consistent with EPA's guidance, except for the deficiency discussed in the "What is EPA's Proposed Condition for Approval?" section. Specifically, New Jersey's NO_x Budget Trading Program is

consistent with EPA's EIP guidance of 1994.

New Jersey's Subchapter 31 contains provisions for definitions, program applicability, opt-ins, interface with the emission offset program and the open market emissions trading program, annual allowance allocation, claims for incentive allowances, permitting, allowance transfer, allowance banking, early reduction credits, the NO_x Allowance Tracking System, monitoring, recordkeeping, reporting, end-of-season reconciliation, compliance certification, excess emissions deduction, the program audit, and guidance documents incorporated by reference and penalties.

Given the documentation in the SIP submittal and the provisions of New Jersey's NO_x Budget Trading Program, and New Jersey's commitment for a periodic program audit, EPA determined that New Jersey will continue to meet the reasonable further progress and SIP attainment requirements.

A Technical Support Document (TSD), prepared in support of this proposed action, contains the full description of New Jersey's submittal and EPA's evaluation. A copy of the TSD is available upon request from the EPA Regional Office listed in the ADDRESSES section.

New Jersey's NO_x Budget Trading Program

What Is the Ozone Transport Commission's Memorandum of Understanding?

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, which committed the signatory states to the development and proposal of a region-wide reduction in NO_x emissions, with one phase of reductions by 1999 and another phase of reductions by 2003. Since the Act required reasonably available control technology (RACT) to reduce NO_x emissions by May of 1995, the OTC MOU refers to the reduction in NO_x emissions by 1999 as Phase II and the reduction in NO_x emissions by 2003 as Phase III.

Which States Signed the OTC MOU?

The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia and the District of Columbia. All of the OTC jurisdictions, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU.

What Does the OTC MOU Require?

The OTC MOU requires a reduction in ozone season (May 1 to September 30) NO_x emissions from utility and large industrial combustion facilities within the Ozone Transport Region. This reduction furthers the effort to achieve the health-based national ambient air quality standard for ozone. In the MOU, the OTC states agreed to propose regulations for the control of NO_x emissions according to the following guidelines:

- The level of required NO_x reductions is from a 1990 baseline emissions level.
- The reduction would vary by location, or zone, and use a two-phase region-wide trading program.
- The reduction required by May 1, 1999 is the less stringent of the following:

a. The affected facilities in the inner zone will reduce their NO_x emission rate by 65% from the 1990 baseline, or emit NO_x at a rate no greater than 0.20 pounds per million Btu.

b. The affected facilities in the outer zone will reduce their NO_x emission rate by 55% from the 1990 baseline, or emit NO_x at a rate no greater than 0.20 pounds per million Btu.

- The reduction required by May 1, 2003 is the less stringent of the following:

c. The affected facilities in the inner and outer zones will reduce their NO_x emission rate by 75% from the 1990 baseline, or emit NO_x at a rate no greater than 0.15 pounds per million Btu.

d. The affected facilities in the northern zone will reduce their NO_x emission rate by 55% from the 1990 baseline, or emit NO_x at a rate no greater than 0.20 pounds per million Btu.

The inner zone consists of all contiguous moderate and above nonattainment areas in the OTC, except those located in Maine. The outer zone consists of the remainder of the OTC, except the northern zone. The northern zone consists of Maine, Vermont and New Hampshire (except for its moderate and above nonattainment areas) and the northeastern attainment portion of New York.

New Jersey must meet the requirements for the inner zone.

How Did States Meet the OTC MOU?

First, after consideration of the reductions required in the OTC MOU, the OTC States developed a 1990 baseline emission level and the emission budgets for 1999 and 2003. The NO_x Budget Trading Program caps

NO_x emissions in the Ozone Transport Region at 219,000 tons in 1999 and 143,000 tons in 2003, less than half of the 1990 baseline emission level of 490,000 tons.

Then, the OTC charged a Task Force of representatives from the OTC States, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), with the task of developing a model rule to implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_x Budget Task Force worked with EPA, as well as representatives from industry, utilities, and environmental groups, and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. EPA's EIP rules formed the general regulatory framework for the model rule. The OTC issued the model rule on May 1, 1996. The model rule was intended to be used by the OTC states to implement the Phase II reductions called for in the MOU. The model rule does not specifically include the implementation of Phase III.

How Did New Jersey Meet the OTC MOU?

In accordance and consistent with the NESCAUM/MARAMA NO_x Budget model rule issued in May 1996, New Jersey developed their regulation, new Subchapter 31 "NO_x Budget Program."

Subchapter 31 includes reduction requirements to implement Phase II and Phase III of the OTC's MOU. The regulation includes provisions for a regional NO_x Budget Trading Program, and establishes procedures for defining NO_x emission allowances for each NO_x control period beginning May 1, 1999 through the NO_x control period ending September 30, 2002 (Phase II), and for each NO_x control period beginning May 1, 2003 and thereafter (Phase III). New Jersey's SIP submittal identifies the budget sources and their initial NO_x allowance allocations.

How Does New Jersey's Program Protect the Environment?

Specific to New Jersey, the NO_x Budget Program will result in NO_x emissions reductions during the ozone season of close to 80% between 1990 and 2003 from applicable sources. In 1990, NO_x emissions from NO_x Budget sources totaled more than 46,500 tons during the ozone season. In 1995, following New Jersey's NO_x RACT rules, emissions of NO_x were reduced to about 21,200 tons during the ozone season. The adopted NO_x Budget Program rules will further reduce NO_x

emissions to 17,300 and 8,200 tons during the ozone season in 1999 and 2003, respectively.

In addition to contributing to attainment of the ozone standard, decreases of NO_x emissions will also likely help improve the environment in several important ways. On a national scale, decreases in NO_x emissions will also decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_x emissions will, to some degree, reduce greenhouse gases and stratospheric ozone depletion.

How Will New Jersey and EPA Enforce the Program?

Under New Jersey's NO_x Budget Trading Program, New Jersey allocates allowances to budget sources. Each allowance permits a source to emit one ton of NO_x during the seasonal control period. For each ton of NO_x discharged in a given control period, EPA will remove one allowance from the source's allowance account. The source, or any other source will never use this allowance again for compliance. This is known as a retirement of the allowance.

Allowances may be bought, sold, or banked. Unused allowances may be banked for future use, with limitation. Each budget source must comply with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, RACT, new source performance standards, or Title IV.

The State and EPA will determine compliance by ensuring that allowances held by a source at the end of each control period meet or exceed the emissions for that source for the given control period. Source owners shall monitor emissions by certified monitoring systems and must report resulting data to EPA. Violations are also possible for not adhering to monitoring, reporting and record keeping requirements. However, as discussed in the "What is EPA's Proposed Condition for Approval?" section, the missing provisions in New Jersey's Program limit the ability of New Jersey and EPA to enforce the Program.

Lastly, the federally-enforceable operating permits for budget sources contain the applicable requirements of the NO_x Budget Program.

When Did New Jersey Propose and Adopt the Program?

New Jersey proposed their NO_x Budget Trading Program on September 15, 1997 and held a public hearing on October 17, 1997. New Jersey requested public comments by November 24, 1997. New Jersey adopted the NO_x Budget Trading Program on June 17, 1998 with an operative date of August 16, 1998.

When Did New Jersey Submit the Program to EPA and What Did it Include?

New Jersey submitted its NO_x Budget Trading Program SIP revision to EPA on April 26, 1999. EPA determined the submittal administratively and technically complete on June 18, 1999.

New Jersey's NO_x Budget Trading Program SIP revision included the following elements:

- New Subchapter 31
- Amended Subchapter 3
- Copies of monitoring guidance and energy efficiency protocol to incorporate by reference
- Allowance allocation file for 1999 and explanation of allocation methodology, as supporting information.

What Other Significant Items Relate to New Jersey's Program?

• New Jersey's NO_x Budget Trading Program SIP revision also fulfills the State's commitments to adopt the NO_x Budget Program with respect to the Alternative Ozone Attainment Demonstration submittals sent to EPA on December 31, 1996 and August 31, 1998.

• New Jersey's Subchapter 31 contains NO_x emissions budget and allocation schemes for 1999 through the ozone season of 2002 (Phase II), and for the ozone season of 2003 and beyond (Phase III) of the OTC NO_x Budget Program. Therefore, Subchapter 31 satisfies New Jersey's obligations under the OTC MOU to make specific additional NO_x reductions by May 1, 2003 and continue to make reductions thereafter. Additionally, New Jersey's attainment demonstrations will rely on the NO_x reductions associated with the OTC program in 2003 and beyond to achieve attainment with the one hour ozone standard. In its current form, except for the deficiency discussed in the "What is EPA's Proposed Condition for Approval?" section, Subchapter 31 is approvable for 1999, 2000, 2001, 2002 and 2003 and thereafter.

In September 1998, EPA issued the final Regional Transport of Ozone Rule ("NO_x SIP Call") requiring 22 eastern

States and the District of Columbia to submit SIP's to address the regional transport of ground-level ozone through reductions in NO_x. New Jersey did not submit the April 26, 1999 SIP revision for Subchapter 31 to satisfy the requirements of the NO_x SIP Call. Therefore, in order to meet EPA's NO_x SIP Call, New Jersey will need to submit an additional SIP revision that establishes the NO_x caps for the State during 2003 and beyond, but New Jersey's Phase III limits may be equivalent to the SIP Call limits.

Conclusion

EPA proposes a conditional approval of New Jersey's NO_x Budget Trading Program due to the deficiency discussed in the "What is EPA's Proposed Condition for Approval?" section. In a July 29, 1999 letter, New Jersey committed to correcting the deficiency within one year of EPA's final action.

To achieve full approval, New Jersey must correct the deficiency and submit it to EPA within one year of EPA's final action on New Jersey's NO_x Budget Trading Program SIP revision. However, if New Jersey corrects the deficiency between the time of today's proposed action and a final rulemaking action, and the correction is consistent with EPA's findings as discussed earlier, EPA proposes full approval of New Jersey's NO_x Budget Trading Program.

EPA requests public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section.

Administrative Requirements

Executive Order 12866

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."

Executive Order on Federalism

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.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on 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 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address environmental health or safety risk that would have a disproportionate effect on children.

Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by

statute, that significantly 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, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other 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.

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 proposed rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act does not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 proposed conditional approval action 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 costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 30, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99-26855 Filed 10-13-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY33-1-197, FRL-6457-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes approval of New York's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New York's portion of the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding, which includes a regional nitrogen oxides budget and allowance (NO_x Budget) trading program that will significantly reduce NO_x emissions generated within the Ozone Transport Region. Today's action proposes approval of New York's regulations which implement Phase II of the NO_x Budget Trading Program to reduce NO_x, and intends to help meet the national ambient air quality standard for ozone.

DATES: EPA must receive written comments on or before November 15, 1999.

ADDRESSES: Address all comments to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the state submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.
New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4014.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) proposes approval of the New York State Department of

Environmental Conservation's (New York's) Nitrogen Oxides Budget and Allowance (NO_x Budget) Trading Program.

The following table of contents describes the format for this

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Why is EPA Proposing this Action?

What is a Budget and Allowance Trading Program?

What Guidance did EPA Use to Evaluate New York's Program?

What is EPA's Evaluation of New York's Program?

New York's NO_x Budget Trading Program

What is the Ozone Transport Commission's Memorandum of Understanding (OTC MOU)?

Which States Signed the OTC MOU?

What Does the OTC MOU Require?

How Did States Meet the OTC MOU?

How Did New York Meet the OTC MOU? How Does New York's Program Protect the Environment?

How Will New York and EPA Enforce the Program?

When Did New York Propose and Adopt the Program?

When Did New York Submit the Program to EPA and What Did it Include?

What Other Significant Items Relate to New York's Program?

Conclusion

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EPA's Action

What Action Is EPA Proposing Today?

EPA proposes approval of a revision to New York's ozone State Implementation Plan (SIP) which New York submitted on April 29, 1999. This SIP revision relates to New York's new Subpart 227-3, "Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program" regulation for New York's NO_x Budget Trading Program.

Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give you the opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections

- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act)

- Make New York's NO_x Budget Trading Program federally-enforceable and available for credit toward the attainment SIP.

What Is a Budget and Allowance Trading Program?

Air emissions trading uses market forces to reduce the overall cost of compliance for sources, such as a power plant, while maintaining emission reductions and environmental benefits. One type of market-based program is an