

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R02–OAR–2023–0252; FRL–11034–01–R2]

**Approval of Air Quality Implementation Plans; New Jersey; Exemptions To Improve Resiliency, Air Toxics Thresholds, PM<sub>2.5</sub> and Ammonia Emission Statement Reporting, and PM<sub>2.5</sub> in Air Permitting****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve adoptions, repeals, and amendments to the New Jersey State Implementation Plan (SIP) concerning exemptions to improve resiliency during emergency situations, updates to hazardous air pollutant (HAP) reporting thresholds, updates to the certification and submission of emission statements, and the addition of Federal New Source Review (NSR) requirements for fine particles (PM<sub>2.5</sub>). The intended effect of New Jersey's revisions are to enable government and business entities to be more resilient during and following disruptions from natural and human-caused disasters; update HAP unit risk factors and reference concentrations to reflect current research, scientific, and technological advancements; update provisions to require the reporting of PM<sub>2.5</sub> and ammonia (NH<sub>3</sub>) emissions at the source level and update the electronic reporting of emission statements to adapt with advancements and Federal requirements; and conform the State's rules on air permits to the EPA's NSR requirements for PM<sub>2.5</sub> to ensure a source does not adversely impact the EPA established National Ambient Air Quality Standards (NAAQS). Other revisions New Jersey made, which the EPA is proposing to approve with this notice of proposed rulemaking, will conform administrative penalties to the proposed rules and correct errors and inconsistencies throughout the State's SIP.

**DATES:** Written comments must be received on or before October 30, 2023.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2023–0252 at <https://www.regulations.gov>. Although listed in the index, some information is not

publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3127, or by email at [ferreira.nicholas@epa.gov](mailto:ferreira.nicholas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Summary of the SIP Revision and the EPA's Analysis
- III. Environmental Justice Considerations
- IV. The EPA's Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

**I. Background**

The EPA is proposing to approve New Jersey's State Implementation Plan (SIP) submittals consisting of new rules, repeals, and amendments to subchapter 8, subchapter 16, subchapter 17, subchapter 18, subchapter 19, subchapter 21, and subchapter 22 of New Jersey Administrative Code, Title 7, Chapter 27 (N.J.A.C. 7:27), as well as

to subchapter 3 of N.J.A.C., Title 7, Chapter 27A.

New Jersey's revisions to N.J.A.C. 7:27 implement changes based on the experience the State has gained in response to disruptions caused by natural disasters such as Superstorm Sandy and discussions that the State has held with representatives of the regulated community and environmental groups. New Jersey's revisions include exemptions from air emission control and permitting requirements that will provide flexibility for facilities to use low-emitting temporary and portable equipment to improve resiliency during emergency situations.

Additionally, New Jersey's revisions update HAP reporting thresholds using the most recent science-based methodologies; amend the rules governing emissions statements to require each facility to report criteria pollutants and precursors (including PM<sub>2.5</sub> and ammonia) at the source level; revise the rules governing certification and electronic submittal of emissions statements; revise the New Source Review (NSR) requirements to implement the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>); and modify penalty provisions to provide consistency with the State's revisions being proposed for approval within this notice. For the reasons herein stated, the EPA proposes to approve the revisions made by New Jersey to strengthen the effectiveness of the State's SIP.

**II. EPA's Evaluation of New Jersey's Submittal**

On December 14, 2017, New Jersey submitted to the EPA, proposed SIP revisions to subchapter 8, subchapter 18, subchapter 21, and subchapter 22 of N.J.A.C. 7:27. Additionally, on August 23, 2018, New Jersey submitted proposed revisions to subchapter 8, subchapter 16, subchapter 17, subchapter 19, subchapter 21 and subchapter 22 of N.J.A.C. 7:27, and to subchapter 3.10 of N.J.A.C., Title 7, Chapter 27A. These proposed revisions to the State's SIP and are listed in the following table. This submission included supplemental materials such as documentation of the public hearing, public comment period, and the State's responses to public comments. These materials are in the EPA's docket for this proposal.

New Jersey regulation:	Related SIP topic(s):
N.J.A.C. 7:27–8 (Subchapter 8) .....	Resiliency; PM <sub>2.5</sub> in Air Permitting.
N.J.A.C. 7:27–16 (Subchapter 16) .....	Resiliency.
N.J.A.C. 7:27–17 (Subchapter 17) .....	Air Toxics Thresholds.
N.J.A.C. 7:27–18 (Subchapter 18) .....	PM <sub>2.5</sub> in Air Permitting.
N.J.A.C. 7:27–19 (Subchapter 19) .....	Resiliency.
N.J.A.C. 7:27–21 (Subchapter 21) .....	Air Toxics Thresholds; PM <sub>2.5</sub> and Ammonia Emission Statement Reporting.
N.J.A.C. 7:27–22 (Subchapter 22) .....	Air Toxics Thresholds; PM <sub>2.5</sub> in Air Permitting.
N.J.A.C. 7:27A–3.10 (Subchapter 3 of Chapter 27A) .....	Penalty Provisions.

*Revisions to Subchapter 8 (Related to Exemptions To Improve Resiliency and PM<sub>2.5</sub> in Air Permitting)*

The EPA is proposing to approve New Jersey’s revisions to subchapter 8, “Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit).” Pertaining to the New Jersey’s August 23, 2018 submittal, with a State effective date of January 16, 2018, the State’s revisions to subchapter 8 include the addition of definitions to N.J.A.C. 7:27–8.1, “Definitions,” for the terms “construction engine,” “emergency management activity,” “open top surface cleaner,” “portable,” “rental facility,” and “stationary reciprocating engine,” as well as amended definitions for the terms “emergency,” “hazardous waste,” and “potential to emit.”

New Jersey’s definition for the term “construction engine” within this subchapter is identical to the definition for this term as it is currently found in the current federally approved version of N.J.A.C. 7:27–19.1, with a State effective date of November 6, 2017. New Jersey’s definition for “stationary reciprocating engine,” which is identical to the definition for the term that New Jersey inserts at N.J.A.C. 7:27–16.1 and 19.1, has no substantive changes and is solely being amended to improve readability. Similarly, the State’s amended definition for the term “hazardous waste” will correct typographical errors. New Jersey’s definition of “emergency management activity” is derived from the Federal Emergency Management Agency’s (FEMA) use of the term and includes activities in advance since, in some instances, it may be necessary to use equipment in advance to reduce the impact of a potentially devastating event. Additionally, New Jersey’s definition of “portable,” found in this subchapter and subchapter 19 and 21 will be consistent with the State’s definition of that term in an August 4, 2011 Memorandum, “Permit Applicability for Equipment and Source Operations Operated During Construction, Repair and Maintenance

Events.”<sup>1</sup> Further, since there exists portable equipment for which an air pollution permit is required, a definition for the term “rental facility” is being added as a business that owns and rents or leases portable equipment to another person(s) to prevent any confusion regarding the application of exempt activities proposed for approval by the EPA with this notice under subchapter 21. The term “open top surface cleaner” is used in the existing N.J.A.C. 7:27–8.2 but is not defined. Therefore, since the State regulates surface cleaners to control the emissions from the VOC and HAP solvents used in this equipment, New Jersey has inserted a definition to this subchapter to provide consistency with the definition for the term that New Jersey also added to subchapters 16 and 22 of N.J.A.C. 7:27.

Furthermore, New Jersey’s amended definition for “emergency” will now be identical to the definition for the term currently found under the existing federally approved N.J.A.C. 7:27–16.1 and 19.1. This definition, which defines an “emergency” as a situation that arises from a sudden and reasonably unforeseeable event beyond the control of an owner or operator of a facility that requires immediate corrective action to prevent a system collapse or to restore normal operations at the facility, will coordinate with New Jersey’s amended definition for “emergency generator” under N.J.A.C. 7:27–16.1 and 19.1, also being proposed for approval by the EPA with this notice. Finally, the definition for “potential to emit” was amended by New Jersey to align with the deletion of components under N.J.A.C. 7:27–31. New Jersey’s amendments to definitions under N.J.A.C. 7:27–8.1, which the EPA is proposing to approve with this notice, will improve resiliency during emergencies or similar situations and strengthen New Jersey’s SIP by improving consistency and uniformity throughout the State’s SIP.

<sup>1</sup> Memorandum on Permit Applicability for Equipment and Source Operations Operated During Construction, Repair and Maintenance Events. [https://www.nj.gov/dep/enforcement/CRM\\_Permit\\_Applic.pdf](https://www.nj.gov/dep/enforcement/CRM_Permit_Applic.pdf). The NJDEP Bureau of Air Permits, Trenton NJ (August 4, 2011).

Moreover, pertaining to New Jersey’s December 14, 2017, submittal to the EPA, with a State effective date of November 6, 2017, the State’s revisions to N.J.A.C. 7:27–8.1 include the addition of definitions for the terms “PM<sub>2.5</sub>” and “SO<sub>2</sub>,” as well as amended definitions for “major facility,” “NO<sub>x</sub> or oxides of nitrogen,” and “PM<sub>10</sub>.” Since the terms “PM<sub>2.5</sub>” and “SO<sub>2</sub>” are used but not defined in N.J.A.C. 7:27–8, the EPA proposes to approve New Jersey’s addition of definitions for the terms at N.J.A.C. 7:27–8.1 which are consistent with those currently in N.J.A.C. 7:27. New Jersey amended the term “major facility” to include major facility thresholds for PM<sub>2.5</sub>, NO<sub>x</sub> as a PM<sub>2.5</sub> precursor, and SO<sub>2</sub> as a PM<sub>2.5</sub> precursor to be consistent with Federal requirements since the current SIP approved definition includes thresholds for both NO<sub>x</sub> and SO<sub>2</sub>, but as ozone precursors, and not as PM<sub>2.5</sub> precursors. For consistency with the definition of NO<sub>x</sub> elsewhere in N.J.A.C. 7:27, the EPA proposes to approve New Jersey’s amended definition of “NO<sub>x</sub>” to add the alternative for the term, “oxides of nitrogen.” Finally, New Jersey’s definition for “PM<sub>10</sub>” which the EPA is proposing to approve with this notice will replace the term “micrometers” with the equivalent and more commonly used term “microns.”

Furthermore, the EPA proposes to approve New Jersey’s revisions to Table A, “Reporting and SOTA thresholds” of 8 Appendix 1, to include a reporting threshold and state of the art (SOTA) threshold for PM<sub>2.5</sub> that are the same as the existing thresholds in the table for PM<sub>10</sub>, since PM<sub>2.5</sub> is a subset of PM<sub>10</sub>. The State’s revisions will strengthen permitting requirements regarding PM<sub>2.5</sub> emissions and consequently strengthen New Jersey’s SIP to be consistent with the Federal requirements. Lastly, New Jersey proposed further revisions to subchapter 8 that EPA will address in a separate rulemaking action.

*Revisions to Subchapter 16 (Related to Exemptions To Improve Resiliency)*

The EPA is proposing to approve New Jersey’s revisions to subchapter 16, “Control and Prohibition of Air

Pollution by Volatile Organic Compounds.” The State’s revisions to N.J.A.C. 7:27–16.1, “Definitions,” include the addition of definitions for the terms “open top surface cleaner” and “PJM Interconnection or PJM” and amendments to definitions for the terms “emergency generator” and “stationary reciprocating engine.”

The terms “open top surface cleaner” and “PJM Interconnection or PJM” are used in the existing federally approved N.J.A.C. 7:27–16 but are not defined. Therefore, as previously mentioned within this notice, a definition for “open top surface cleaner” was added by New Jersey to this subchapter to provide consistency with the definition for the term which New Jersey also added to subchapters 8 and 22 of N.J.A.C. 7:27. Additionally, since New Jersey defined an “emergency generator” as being operated during power outages and voltage reductions issued by PJM, a definition for “PJM Interconnection” or “PJM,” which was previously used in the regulations but not defined, was added to subchapter 16 by the State to define the regional electricity transmission organization. As previously stated within this notice, New Jersey’s amended definition for “stationary reciprocating engine” has no substantive changes and was merely amended to improve readability and provide consistency with the definition for the term in other subchapters of N.J.A.C. 7:27.

The EPA also proposes to approve New Jersey’s amended definition for the term “emergency generator.” The State’s revised definition for “emergency generator” will expand the allowable use of permitted emergency generators to provide electrical power when the primary source of energy is unavailable following a power disruption that results from construction, repair, or maintenance activity at a facility for a limit of no more than 30 days in any calendar year. There will be no similar time limit for the use of an emergency generator following the issuance of a voltage reduction by PJM or during an emergency, as is defined under the definition for the term “emergency” within the current federally approved version of this subchapter. This proposed allowance will not include operation during performance of normal testing and maintenance procedures on emergency generators as recommended by the manufacturer and provided under N.J.A.C. 7:27–19.2(d)(1). Moreover, emergency generators will continue to be subject to permit requirements at N.J.A.C. 7:27–8.2(c)(1) and paragraph 11 of the definition of

“significant source operation” at N.J.A.C. 7:27–22.1.

Facilities that experience a power disruption because of construction, repair, or maintenance may be forced to shut down their operations due the unavailability of an accessible power source. New Jersey states in its submission that “the time required to obtain a permit for a generator or other portable equipment to be used in an emergency could result in unacceptably delayed responses to emergency situations.” The practical solution to remedy power disruptions that result from construction, repair, or maintenance is to allow facilities to use their pre-installed emergency generators for a limited time. Such an approach has many benefits. First, it will minimize downtime to the operating facility, as the process of firing a pre-installed generator unit is rather expeditious. This will enable affected businesses to be more resilient to disruptions with as little interruption to business operations as possible. Second, operating a pre-installed emergency unit instead of a rental unit is beneficial to the environment because the evidence points to such pre-installed units being better maintained, thereby resulting in higher operating performance and less pollution. Finally, as the incentive for not reporting emissions resulting from the unpermitted use of emergency generators under such conditions at facilities with a facility-wide potential-to-emit that is less than the reporting thresholds in Table 1 at N.J.A.C. 7:27–21.2(a) is removed, regulators would be expected to have access to more reliable actual emissions data, which could then be used to improve air quality modeling and data analysis.

Moreover, as New Jersey mentions in their submission to the EPA, following Superstorm Sandy, there has been an increase in the number of permitted emergency generators being operated on natural gas (NJDEP has issued 461 air permits for natural gas-fired emergency generators from 2013 through 2016). Additionally, as clarified by New Jersey, in an email provided within the docket for this proposed rulemaking, although facilities are asked to acquire Tier 3 or 4 emergency generator rentals, the majority of rental emergency generators are diesel fuel-fired (Tier 2 or less). Natural gas combustion produces less off-gassing than anything achieved by diesel; therefore, a positive environmental impact is expected from this proposed allowance of permitted onsite emergency generators following a power disruption that results from construction, repair, or maintenance activity at a facility, since many of the

recently permitted emergency generators are natural gas fired. Furthermore, in its submittal, New Jersey asserted that even if an existing on-site permitted emergency generator is a Tier 2 diesel-fired engine, and not natural gas-fired, the unnecessary mobile emissions created from the transport of a Tier 2 rental emergency generator to and from a facility, especially if the mobile source is also fueled by diesel, would result in a negative air quality impact.

Per the comments New Jersey received in response to the proposed revised definition for the term “emergency generator,” the EPA acknowledges that it is not currently feasible for the State to accurately quantify the air quality impact of allowing the use of onsite emergency generators during power disruptions that result from construction, repair, and maintenance at a facility since emissions from these sources under these circumstances are not reported to the State unless these sources are located at a facility with a facility-wide potential-to-emit that is equal to or greater than the reporting thresholds in Table 1 at N.J.A.C. 7:27–21.2(a). However, as previously stated, with the removal of the incentive to not report the emissions resulting from the unpermitted use of emergency generators under such conditions, it is expected that further quantifying the air quality impact of such usage would become possible.

Although the EPA believes New Jersey’s amended definition for “emergency generator” provides air quality benefits, the structure of New Jersey’s amended definition, which includes the allowable use of emergency generators for up to 30 days following a power disruption that results from construction, repair, or maintenance activity at a facility, is not, on its face, consistent with EPA’s established definition for the term. Nonetheless, the EPA does not believe this is a sufficient justification for disapproval of the definition. As previously detailed, the EPA believes the amended definition adds further constraints on the use of emergency generators and that a positive environmental impact is expected. Thus, while the EPA is proposing to approve the amended definition for “emergency generator,” the EPA advises that, for clarity, New Jersey consider creating and submitting for SIP approval: a definition that parallels EPA’s definition of “emergency generator” and a separate provision that allows for the use of emergency generators following a power disruption that results from

construction, repair, or maintenance activity at a facility. In summary, since this proposed expanded use of emergency generators will not interfere with maintenance and attainment of the NAAQS and a positive environmental impact is expected, EPA proposes to approve the revision.

Additional revisions to subchapters 16, that the EPA is proposing to approve will update N.J.A.C. 7:27–16.4 to prevent any potential confusion by providing units of measure for inputs within the existing equation for calculating the emission factor to be utilized when determining the total annual emission rate for a storage tank. The EPA is proposing to approve New Jersey's deletion of subparts 16.6(a) through (i) to simplify the codified rules since the specified date in the most recent federally approved rule has passed and is no longer applicable to open top tanks and surface cleaners that contain VOC and to solvent cleaning operations. The EPA is also proposing to approve the State's revision which will remedy confusion with existing N.J.A.C. 7:27–16.6(j)(3) that currently prohibits the use of water, which is technically a solvent, in cleaning machines. The EPA is also proposing to approve the State's amendment to subpart 16.16 to improve clarity and address a holdover from a prior version of these rules. Furthermore, New Jersey's revision to N.J.A.C. 7:27–16.16(d)(4) is being proposed for approval by the EPA and will regulate VOC with a vapor pressure greater than 14.7 psia by establishing the source gas range classification based solely on the percent by volume of the VOC in a source gas emitted from source operation.

Furthermore, the EPA is proposing to approve New Jersey's deletion of N.J.A.C. 7:27–16.17(b)(1), which required the submission of a demonstration by certain source operations subject to N.J.A.C. 7:27–16.17(a)(1), being this provision no longer has any effect since submission was due October 26, 1994. Consequently, subchapter 16.17(e), (l), and (r), which relate only to N.J.A.C. 7:27–16.17(b)(1), were also removed by the State. In conclusion, all the previously detailed revisions New Jersey made to subchapter 16 are being proposed for approval by the EPA with this notice since it is expected they will improve resiliency during emergencies or similar situations and strengthen New Jersey's SIP by improving uniformity throughout N.J.A.C. 7:27.

#### *Revisions to Subchapter 17 (Related to Air Toxics Thresholds)*

The EPA is proposing to approve New Jersey's revisions to subchapter 17, now entitled, "Control and Prohibition of Air Pollution by Toxic Substances and Hazardous Air Pollutants." The State's revisions, which add a definition to N.J.A.C. 7:27–17.1, "Definitions," for the term "hazardous air pollutant" or "HAP," necessitate further revisions to the subchapter to update and consolidate New Jersey's reporting thresholds for 185 of the air contaminants that are identified as HAPs under 42 U.S.C. 7412(b). It should be noted that while 42 U.S.C. 7412(b) contains 187 HAPs, New Jersey's rules will contain reporting thresholds for 185 of the federally listed HAPs since the State regulates the two remaining federally listed HAPS, radionuclides, and mineral fibers, including asbestos, through its Radiation Protection rules.<sup>2</sup>

New Jersey promulgated the existing HAP reporting thresholds more than 25 years ago and has not updated them since. Current research and scientific advancements in toxicology have generated new and modified HAP unit risk factors and reference concentrations. In addition, technological improvements have produced more accurate air quality modeling computer programs. In some cases, these improvements and advances have indicated the existing HAP thresholds are not stringent enough to be protective of human health and the environment. In others, it has been determined the thresholds can be less stringent and still protect health and the environment, lessening the regulatory burden on applicants.

Under the most recent SIP approved HAP thresholds for New Jersey, the State regulated only 13 HAPs under N.J.A.C. 7:27–17. The existing reporting and SOTA thresholds for these 13 HAPs, identified by New Jersey as "toxic substances," were listed under N.J.A.C. 7:27–8 Appendix 1, Table A and B. To simplify cross-references, the EPA, therefore, proposes to approve New Jersey's revisions which relocate, consolidate, and update all the HAP reporting and SOTA thresholds from Tables A and B of Appendix 1 in N.J.A.C. 7:27–8, and Table B of the Appendix in N.J.A.C. 7:27–22, to N.J.A.C. 7:27–17.9. The State's revisions to update regulations related to HAPs in subchapter 17 reflects the most recent

science on air toxics and ensures that the State remains protective of public health and welfare without placing undue burden on industry. New Jersey's procedure for updating the HAP thresholds was based on scientific advancements detailing the latest scientifically generated risk factors and exposure assessment techniques, technological improvements producing more accurate air quality modeling computer programs, and robust statistical evaluation of maximum ambient concentrations of HAPs for a range of stack heights and property line distances through the AMS/USEPA Regulatory Model (AERMOD) modeling system (Version 15181).

Under N.J.A.C. 7:27, for New Jersey to determine the type of permit modification that a facility must submit, a facility must conduct a health risk assessment, as described in Technical Manual 1003, for the HAPs that it identifies.<sup>3</sup> With the revisions New Jersey made, which the EPA is proposing to approve with this notice, if a risk assessment indicates potential HAP emissions to be above the established threshold and non-negligible, the facility must modify the source operation to lower the risk to the point where the output shows a negligible risk or consider other risk reduction measures. With the implementation of the more comprehensive health risk assessment, which is expected to further reduce risk from the health impacts associated with discharges, and its consideration of numerous variables including stack heights, discharge direction, potential for aerodynamic downwash, and health impact on the surrounding communities, portions of existing N.J.A.C. 7:27–17.4 are therefore redundant. Therefore, the EPA proposes to approve New Jersey's deletion of existing N.J.A.C. 7:27–17.4(a) and (b), which requires specific conditions be met regarding the discharge for 11 of the 13 HAPs that New Jersey previously regulated under the most recent federally approved version of subchapter 17. Moreover, N.J.A.C. 7:27–17.4(a) and (b) evaluate only 11 toxic substances, all of which are a subset of the list of HAPs, while the health risk assessment procedure evaluates all 185 HAPs, thereby providing more protection from air toxics to surrounding communities.

Consequently, the EPA also proposes to approve New Jersey's removal of

<sup>2</sup> New Jersey Radiation Regulation Downloads including N.J.A.C. 7:28 and the Radiation Protection Act. <https://www.state.nj.us/dep/rpp/njacdown.html>. The NJDEP's Radiation Protection Element (last updated February 6, 2023).

<sup>3</sup> Guidance on Preparing a Risk Assessment for Air Contaminant Emissions: Technical Manual 1003 <https://dep.nj.gov/wp-content/uploads/boss/technical-manuals/1003.pdf>. The NJDEP Division of Air Quality (2018).

definitions under N.J.A.C. 7:27–17.1 for the terms “aerodynamic downwash,” “effective stack height,” and “stack or chimney” being they are no longer required as they are solely referenced under provisions N.J.A.C. 7:27–17.4(a) and (b). Further, the State’s deletion of N.J.A.C. 7:27–17.4(a) and (b) necessitated an amendment to what was previously N.J.A.C. 7:27–17.9(a) and made provisions under the previous version of N.J.A.C. 7:27–17.4 inapplicable to the benzene constituent of gasoline discharged to the atmosphere from storage tanks or transfer operations. N.J.A.C. 7:27–17.9 is now listed as N.J.A.C. 7:27–17.8 and N.J.A.C. 7:27–17.8(a), previously N.J.A.C. 7:27–17.9(a), is amended to remove the exemption of benzene constituents of gasoline from N.J.A.C. 7:27–17.4. The New Jersey revisions now subject benzene to the health risk assessment which is intended to reduce health risks from discharges as previously detailed. Therefore, with this notice of proposed rulemaking, the EPA proposes to approve all the previously mentioned revisions that New Jersey made to subchapter 17 as they will strengthen the State’s SIP by updating the HAP reporting thresholds to incorporate the latest scientifically generated risk factors and exposure assessment techniques.

*Revisions to Subchapter 18 (Related to PM<sub>2.5</sub> in Air Permitting)*

The EPA is proposing to approve New Jersey’s revisions to subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules).” In 1997, the EPA first established annual and 24-hour NAAQS for PM<sub>2.5</sub>. PM<sub>2.5</sub> includes all particulate matter having an aerodynamic diameter less than or equal to a nominal 2.5 microns, including condensable particulate matter. After establishing NAAQS for PM<sub>2.5</sub>, the EPA promulgated PM<sub>2.5</sub> permitting requirements, which New Jersey’s amendments to this subchapter are intended to address. The EPA developed the Federal New Source Review (NSR) program to ensure that the construction and modification of sources of air contaminant emissions do not adversely impact the ambient levels of a criteria pollutant for which the EPA established a NAAQS. As part of the PM<sub>2.5</sub> NAAQS implementation, the EPA expanded NSR requirements to include PM<sub>2.5</sub> and its precursors (71 FR 28321, May 16, 2008). The revisions New Jersey made, which will conform the State’s rules to the EPA’s NSR requirements for PM<sub>2.5</sub>, are being proposed for approval

into the SIP with this rulemaking by the EPA.

New Jersey’s revisions to subchapter 18 include the addition of definitions to N.J.A.C. 7:27–18.1, “Definitions,” for the terms “PM<sub>2.5</sub>” and “PM<sub>2.5</sub> inter-pollutant offset” as well as an amended definition for “respective criteria pollutant” which incorporates new requirements for PM<sub>2.5</sub> and its precursors by identifying NO<sub>x</sub> and SO<sub>2</sub> as precursors of PM<sub>2.5</sub>. Thus, the definition for “respective criteria pollutant” will include PM<sub>2.5</sub> as a respective criteria pollutant for PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub>. PM<sub>2.5</sub> is emitted to the atmosphere in two ways: primary PM<sub>2.5</sub> emissions are discharged directly from a stack; and secondary PM<sub>2.5</sub> emissions are formed downwind from the stack when PM<sub>2.5</sub> precursor gases, such as NO<sub>x</sub> and SO<sub>2</sub>, are transformed through physical or chemical processes to fine particulates (73 FR 28321, at 28326 through 28328, May 16, 2008). The EPA proposes to approve New Jersey’s definition for the term “PM<sub>2.5</sub> inter-pollutant offset” which will be consistent with the Federal requirements and will simplify provisions in N.J.A.C. 7:27–18.5 that refer to this type of emission offsetting.

The Emission Offset rules at N.J.A.C. 7:27–18 apply to a facility if the facility has the potential to emit any of the air contaminants listed in N.J.A.C. 7:27–18.2(a)(1) at a level equal to or exceeding the threshold level in the rule. Thus, the EPA is proposing to approve New Jersey’s amendment at N.J.A.C. 7:27–18.2(a)(1) which will strengthen the State’s SIP by adding PM<sub>2.5</sub>, and NO<sub>x</sub> and SO<sub>2</sub> (as PM<sub>2.5</sub> precursors), to the list of air contaminants and by setting potential to emit applicability threshold levels for the previously listed air contaminants. These revisions to threshold levels will impose conditions upon growth and development to ensure that new construction, industrial growth and development, and modification of sources of air contaminant emissions do not result in increased emissions that could negatively impact maintenance or attainment of NAAQS in an area within the State.

The Emission Offset program also avoids further degradation of air quality by requiring an air quality impact analysis pursuant to N.J.A.C. 7:27–18.4. The EPA is proposing to approve New Jersey’s revisions to include annual and 24-hour significant air quality impact levels (or SILs) for PM<sub>2.5</sub> at Table 1 under N.J.A.C. 7:27–18.4, which are identical to that which the EPA established in Appendix S and its rules at 40 CFR 51.165(b). This revision will

require an applicant seeking a permit for a proposed new source or proposed modification of an existing source for which there would be a significant net emission increase (SNEI) of any air contaminant listed in Table 3 of N.J.A.C. 7:27–18.7, to conduct an air quality impact analysis to demonstrate that the allowable emission increases from the proposed new or modified source would not cause or contribute to a violation of an applicable NAAQS. The EPA proposes to approve New Jersey’s modification which will reinforce air permitting requirements related to PM<sub>2.5</sub> and is expected to improve air quality.

Additionally, the EPA proposes to approve New Jersey’s amendments to Table 2 under N.J.A.C. 7:27–18.5(c) which would establish minimum offset ratios for increased emissions of PM<sub>2.5</sub> and its precursors of 1.0:1.0, which is the same offset ratio as set forth in Appendix S, Section IV.A and Clean Air Act (CAA) Section 173(c). The State’s amendments to Table 2 also address how nearby the emission reductions must be to a facility to be considered emission offsets and ensure that the emission reductions for PM<sub>2.5</sub> and its precursors may be obtained at any distance from the facility’s address. The EPA also proposes to approve the State’s amended N.J.A.C. 7:27–18.5(f)(1) which will establish a minimum offset ratio of 1.00:1.00 for NO<sub>x</sub> and SO<sub>2</sub> (as PM<sub>2.5</sub> precursors). New Jersey’s amendments to N.J.A.C. 7:27–18.5(g) and N.J.A.C. 7:27–18.5(l), allow PM<sub>2.5</sub> inter-pollutant offsets, which is the use of creditable emission reductions of PM<sub>2.5</sub> and its precursors (NO<sub>x</sub> and SO<sub>2</sub>) to offset increases of PM<sub>2.5</sub> and its precursors, removing the restriction that the emission reductions must be to the same air contaminant category. The State’s revisions, which the EPA proposes to approve with this notice, better reflect the requirements of Appendix S for criteria pollutants, such as PM<sub>2.5</sub> and its precursors, and will make the provisions of subchapter 18 more consistent with Federal regulations.

Furthermore, under the revised N.J.A.C. 7:27–18.5(l), a facility that proposes to use PM<sub>2.5</sub> inter-pollutant offsets must use one of three methods to demonstrate that there is a net air quality benefit from the ratio that it proposes. This revision from New Jersey will remove the restriction that emission reductions must be for the same air contaminant category. The EPA is proposing to approve this revision since this is expected to improve air quality by allowing a facility to offset PM<sub>2.5</sub> with reductions of either SO<sub>2</sub> or NO<sub>x</sub> emissions as offsets (but only if these are being offset as precursors to PM<sub>2.5</sub>),

and not limit a facility to offset PM<sub>2.5</sub> solely with reductions of PM<sub>2.5</sub>. The State's new N.J.A.C. 7:27–18.5(m) clarifies that the permit applicant would need to secure NO<sub>x</sub> offsets only once (based on the more stringent offset ratio) when offset ratios (for NO<sub>x</sub> as an ozone precursor or NO<sub>x</sub> as a PM<sub>2.5</sub> precursor, or both) would apply and when NO<sub>x</sub> offsets are required both for ozone and for PM<sub>2.5</sub>. New Jersey's amended N.J.A.C. 7:27–18.5(n) prohibits the use of PM<sub>2.5</sub> inter-pollutant offsets for use in a determination of significant net emission increase (SNEI), being that EPA is not allowing inter-pollutant offsets for SNEI purposes at this time (as stated in the preamble to the 2008 final rule (73 FR 28321)), since doing so would be resource-intensive and demonstrating the net air quality benefit of a single source trade through air quality modeling is difficult. The EPA proposes to approve all the previously mentioned revisions New Jersey made as it believes these modifications will further strengthen the State's SIP and improve air quality.

Finally, the EPA also proposes to approve New Jersey's addition of PM<sub>2.5</sub> and its precursors (NO<sub>x</sub> and SO<sub>2</sub>) to the list of air contaminants in N.J.A.C. 7:27–18.7, Table 3; as well as the State's established SNEI levels for these newly added air contaminants. If a facility emits or proposes to emit an air contaminant at a level greater than the SNEI threshold, the facility must obtain an air permit that includes non-attainment NSR (NNSR) requirements, such as offsets. New Jersey will not issue an air permit that would result in an exceedance of a NAAQS. With the revisions New Jersey made to subchapter 18, that the EPA is proposing to approve, requirements for applicants to secure emission offsets in accordance with the subchapter will strengthen the State's SIP and improve air quality.

#### *Revisions to Subchapter 19 (Related to Exemptions To Improve Resiliency)*

The EPA is proposing to approve New Jersey's revisions to subchapter 19, "Control and Prohibition of Air Pollution from Oxides of Nitrogen." The State's revisions to subchapter 19 will correct inconsistencies and typographical errors in the subchapter, amend provisions within the subchapter applicable to emergency generators, and revise exemptions to improve resiliency during and following significant events.

Under N.J.A.C. 7:27–19.1, "Definitions," revisions New Jersey made, which the EPA is proposing to approve into the State's SIP, include the addition of definitions for the terms

"portable" and "PJM interconnection;" revisions to definitions for "stationary reciprocating engine," "construction engine" and "emergency generator;" and the deletion of definitions for the terms "MEG alert," "budget source" and "load dispatcher." The definitions for "portable," "PJM interconnection," "stationary reciprocating engine," "construction engine" and "emergency generator" will be consistent with the definitions for the terms previously discussed within this notice and being proposed for approval by the EPA. Furthermore, the definitions for the terms "MEG alert," "budget source," and "load dispatcher" were deleted by the State because they are only used in this subchapter in connection with provisions under the subchapter (N.J.A.C. 7:27–19.24) that no longer exist and will be unnecessary with the finalizing of this rulemaking.

New Jersey's amended definition for the term "emergency generator," being proposed for approval with this notice, identifies the allowable uses for emergency generators. Thus, subparagraph 3 under the current SIP approved definition for "emergency generator" within subchapter 19.1, which details the use of an emergency generator for repair and maintenance, is proposed to be relocated to amended N.J.A.C. 7:27–19.2(d)1. Although emergency generators are technically stationary reciprocating engines, and therefore subject to permit requirements at N.J.A.C. 7:27–8.2(c)(1) and paragraph 11 of the definition of "significant source operation" at N.J.A.C. 7:27–22.1, due to their limited use, they are not subject to any VOC RACT rules under N.J.A.C. 7:27–16 and there are no applicable presumptive NO<sub>x</sub> RACT emission limits under N.J.A.C. 7:27–19. Currently, within subchapter 19, the only NO<sub>x</sub> RACT rules applicable to emergency generators are recordkeeping requirements listed at N.J.A.C. 7:27–19.11. However, in the current SIP approved N.J.A.C. 7:27–19.2(d), the existing language is not precise and fails to make it clear that recordkeeping is the only NO<sub>x</sub> RACT requirement applicable to emergency generators. Thus, the EPA proposes to approve the State's revised N.J.A.C. 7:27–19.2(d), which improves readability and clarifies that recordkeeping satisfies all the NO<sub>x</sub> RACT requirements applicable to emergency generators under subchapter 19.

In addition, the State has recognized and expressed the need for public water systems, wastewater and stormwater systems, and sludge management facilities to perform normal testing and maintenance on their emergency

generators, regardless of air quality, during the 48 hours prior to a National Weather Service-designated named storm impacting the facility's area of the State. Thus, New Jersey's amended N.J.A.C. 7:27–19.2(d)(2) reflects the requirements for such testing and will require notification to the State when air quality is forecast to be unhealthy or worse during that time of testing.

Under subchapter 19, the term "portable" is being proposed to be defined as being "not attached to a permanent foundation, and designed and capable of being carried or moved from one location to another by means of wheels, skids, carrying handles, dolly, trailer, platform, or similar device." Thus, being that retrofitting engines powering portable equipment to meet NO<sub>x</sub> emission standards would make such equipment no longer truly portable, the EPA proposes to approve the State's new N.J.A.C. 7:27–19.2(g). This revision will exclude engines that are not connected to the electric power distribution grid, not replacing grid power, and are portable and supplying power only to portable equipment from the provisions of subchapter 19. Nevertheless, engines which are connected to the electric power distribution grid or are replacing grid power will not be exempt and will remain subject to the NO<sub>x</sub> emission standards of subchapter 19 (N.J.A.C. 7:27–19.8). Additionally, since the EPA considers portable equipment remaining on site for more than a year to be a stationary source, under such qualifying circumstances, portable equipment would not be exempt from the NO<sub>x</sub> emission standards of subchapter 19 and would be subject to applicable Federal regulations.

In effort to prevent the requirement that a facility operate a boiler or indirect heat exchanger during a given calendar year quarter solely for the purpose of performing an annual adjustment of the combustion process, as required under existing N.J.A.C. 7:27–19.7(g)(1) through (3), the EPA is proposing to approve the State's new N.J.A.C. 7:27–19.7(g)(4). This amendment will allow the owner/operator of an industrial/commercial/institutional boiler or other indirect heat exchanger that is not used at least quarterly to adjust the combustion process within seven days after the next operation of the boiler or indirect heat exchanger. The EPA proposes to approve New Jersey's revision which will strengthen the State's SIP by eliminating unnecessary operation of a boiler or indirect heat exchanger that can potentially negatively impact air quality. Moreover, the EPA is proposing to approve New Jersey's revisions to

N.J.A.C. 7:27–19.8(a), (b), and (c) which will correct minor errors such as replacing “370kW” with “37kW” and “or more” with “or greater,” when referring to engine output in (a) through (c). These revisions will provide consistency with terminology and enhance clarity to N.J.A.C. 7:27–19.8 since the recordkeeping requirements for emergency generators do not make sense if they are applicable to only those emergency generators with a maximum rated power output of exactly 37 kW hours. The EPA also proposes to approve the State’s revisions to N.J.A.C. 7:27–19.11(a) which will replace the term “maximum rated output” with the correct term, “maximum rated power output,” and clarify that the recordkeeping requirements extend to emergency generators with a maximum power output rating of 37 kW or more by adding the phrase “or greater.”

Furthermore, the EPA also proposes to approve New Jersey’s amendments to N.J.A.C. 7:27–19.16(a)(5) to correct the inaccurate suggestion that oxygen (O<sub>2</sub>) is to be measured in parts per million by volume on a dry basis (ppmvd). Oxygen is measured in percent, as is correctly stated in the current federally approved instructions at N.J.A.C. 7:27–19.16(a)(6). N.J.A.C. 7:27–19.24, which concerns MEG alerts (periods when electric generating units operate at emergency capacity) that occurred on or before November 15, 2005, is to be repealed from the State’s SIP since this date has long passed, making these provisions obsolete and no longer having any effect. As stated previously in the explanation of revisions to N.J.A.C. 7:27–19.1, with the State’s deletion of N.J.A.C. 7:27–19.24, the EPA is proposing to approve the removal of the terms “MEG alert,” “budget source,” and “load dispatcher” since they are only utilized in N.J.A.C. 7:27–19.24.

The EPA proposes to approve New Jersey’s deletion of the 500-hours allotted for natural gas curtailment at permitted facilities under N.J.A.C. 7:27–19.25(c)(4). The State’s amended rule will allow a permitted combustion source to continue to operate without interruption during the full period of natural gas curtailment and will require the combustion source to return to using only natural gas or obtain an appropriate permit once the supply of natural gas is restored. The proposed deletion of this provision will not remove the requirement for a source to control its emissions and, if a source has controls, it must continue to operate such controls whenever technically feasible, regardless of the fuel type being combusted. Additionally, the owner or operator of a source will be required to

satisfy the recordkeeping requirements of N.J.A.C. 7:27–19.19(d) and (e) and incorporate such records into reports submitted to the State as required at N.J.A.C. 7:27–19.19(g) and in accordance with the reporting requirements of N.J.A.C. 7:27–19.25(d)(1)–(4).

The EPA acknowledges New Jersey’s determination that during significant events and their aftermath, the operation of a facility may be crippled if natural gas remains unavailable for more than 500 hours (roughly 20 days) during a consecutive 12-month period. The existing regulations require an owner or operator of such facilities to obtain or modify facility permits to enable the combustion source to operate on liquid fuel and to have the combustion source comply with applicable NO<sub>x</sub> emission limits under N.J.A.C. 7:27–19, while the fuel oil or other liquid fuel is burned. Modifying a permit is a complex process that requires thorough evaluation and consideration, which may be made even more difficult when the State is faced with addressing competing priorities following significant events and their aftermath. New Jersey states in its submittal to the EPA, that few facilities have reached the 500-hour limit under the existing N.J.A.C. 7:27–19.25(c)(4) and have only done so during significant weather events and their aftermath, which are the circumstances this rule was designed to provide resiliency for. In discussions with facilities following the aftermath of Superstorm Sandy and other major storms, it was made clear that the switch to oil was a necessity as natural gas was sometimes limited. By removing the 500 hours limitation, operations such as essential services, can continue to be available even if the natural gas curtailment period goes beyond 500 hours.

Historically, natural gas curtailments usually occur during extreme cold weather events that require the burning of large amounts of natural gas and fuel oil to keep private dwellings warm. In order to manage available supplies during these frigid days, a curtailment of natural gas for large industrial users is implemented when natural gas supplies are forecasted to run low during an extended period of frigid temperatures. Thus, the proposed deletion of the 500-hour limit restriction for fuel oil use during potential extended natural gas curtailments is appropriate. Additionally, any associated increase of NO<sub>x</sub> and VOC emissions from the additional oil burning during natural gas curtailments events in response to cold weather

events is not expected to be of significant concern since ozone exceedances occur during the warmer months and not during the colder months. If natural gas curtailment happens to last longer than 500 hours, it is not advantageous to require a facility to shut down as they have no control over the supply of natural gas, especially under emergency conditions. It is critical that facilities like hospitals and emergency response facilities be allowed to continue operating equipment for heating and power. Furthermore, the proposed deletion of the 500-hour limit for the use of fuel oil is expected to have a negligible environmental impact because, historically, lengthy curtailments seldom occur.

Per the comments New Jersey received in response to the proposed deletion of the 500-hour limit for natural gas curtailment, the EPA acknowledges that it is not feasible for the State to quantify the air quality impact that would be expected from the deletion of such a provision. Since the State does not require facilities to report the use of fuel oil during periods of natural gas curtailment, the information needed to calculate the emissions impact is not available. Additionally, the EPA acknowledges it is not possible to predict or project when and for how long a natural gas curtailment may take place in the future, and to what extent it is likely to exceed the 500-hour limit previously in effect. Extreme weather events are predicted to increase in severity and frequency in response to climate change, and these are the events for which such a provision within this notice is seeking to provide resiliency for. Thus, the EPA agrees with the State’s claim that deletion of the 500-hour limit will have a negligible, albeit unquantifiable, environmental impact because the use of the exemption for more than 500 hours will only be during the occurrence of an exceptional event.

Finally, the EPA is proposing to approve New Jersey’s revision that will address a discrepancy between existing N.J.A.C. 7:27–19.25(d) and 19.19(g). N.J.A.C. 7:27–19.25(d) refers to the submission of quarterly reports; however, existing N.J.A.C. 7:27–19.19(g) provides for either quarterly reports (N.J.A.C. 7:27–19.19(g)1) or annual reports (N.J.A.C. 7:27–19.19(g)2), depending on whether a combustion source is equipped with a continuous emission monitoring system (CEMS). With the State’s revision to replace “required quarterly” in the existing version of N.J.A.C. 7:27–19.25(d) with a reference to N.J.A.C. 7:27–19.19(g), the discrepancy is eliminated. This revision

will require quarterly reports if a combustion source has a CEMS and annual reports if it does not in accordance with the existing N.J.A.C. 7:27–19.19(g). In conclusion, the EPA is proposing to approve New Jersey's revisions to subchapter 19, as previously detailed within this notice, since they will improve resiliency by enabling government and business entities to respond swiftly and recover from emergency situations.

*Revisions to Subchapter 21 (Related to Air Toxics Thresholds and PM<sub>2.5</sub> & Ammonia Emission Statement Reporting)*

The EPA is proposing to approve New Jersey's adoptions and revisions to subchapter 21, "Emission Statements." The State's amendments to subchapter 21 modify outdated provisions and make reporting requirements consistent with Federal guidelines. At N.J.A.C. 7:27–21.1, "Definitions," the EPA proposes to approve the State's update to the definition for "Emission Statement Guidance Document" to correct the internet address at which this document can be viewed so that it corresponds to the most recent version of the document which is updated annually. Additionally, a definition for "RADIUS," which is New Jersey's Remote Access Data Information User System and is utilized for electronic submissions and interactions with the State, is now defined to include reference to successor software which the State intends to develop in the future for the same usage as RADIUS. This reference to successor software will allow for the definition to adapt with future technology and minimize confusion that may arise otherwise. Finally, the State's amendments to the definition of "PM<sub>2.5</sub>" correct grammar and are intended to provide clarity to PM<sub>2.5</sub> emission statement reporting.

New Jersey's subchapter 21 requires a facility with the potential to emit an air contaminant in excess of the applicable threshold to submit an Emission Statement. The existing rules require the reporting of PM<sub>2.5</sub> and ammonia at the facility-wide level, which means that a facility would report a single value for each pollutant, representing the total of all emissions of that pollutant from all sources and/or equipment at that facility. This is inconsistent with the Federal Air Emissions Reporting Requirements (AERR), which require the reporting of all criteria pollutants and precursors (including PM<sub>2.5</sub> and ammonia) at the source level for each facility. Accordingly, the EPA proposes to approve New Jersey's amended N.J.A.C. 7:27–21.3(b) which will require

the reporting of PM<sub>2.5</sub> and ammonia at the source level to be consistent with the Federal AERR reporting requirements.

The EPA anticipates that there will be no economic impact with the proposed requirement of reporting PM<sub>2.5</sub> and ammonia at the source level instead of the facility level. Reporting at the source level will not require any additional effort since the source-level emissions already have to be determined in order to calculate the facility-level emissions. In addition, this level of reporting is consistent with the current practice of the regulated community in New Jersey, in accordance with Federal requirements. Furthermore, the EPA proposes to approve the State's amended N.J.A.C. 7:27–21.3(b)(1)(ii) and (2)(iii) which will require emissions for particular HAPs listed under N.J.A.C. 7:27–21 Appendix 1, Table 1, that exceed the applicable thresholds in proposed N.J.A.C. 7:27–17.9 to be included on emission statements. Notably, this will not include hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1, 1, 1 trichloroethane, carbon dioxide and methane. As a result of the previously discussed new HAP reporting thresholds for the State, proposed for approval by the EPA with this rulemaking, emissions of certain HAPs, which may have not exceeded the previous applicable thresholds and were therefore not previously reported on emissions statements, will now be required in some cases. This will improve air quality by requiring the reporting of certain air toxics on emission statements in conjunction with the newly proposed reporting thresholds in this notice.

Moreover, New Jersey's amendment to N.J.A.C. 7:27–21.4 will eliminate the option for permittees to submit emission statements electronically through the less secure use of email, in favor of the option to submit these statements through the State's secure internet portal, NJDEP Online ([www.njdeponline.com](http://www.njdeponline.com)). Under the proposed revision, reference to email submissions is deleted and a facility will continue to prepare its emission statement using RADIUS, as required under the existing rules, but submit it electronically through NJDEP Online. This revision is proposed for approval by the EPA since it will provide the requisite level of security to satisfy the Federal Cross-Media Electronic Reporting Rule (CROMERR) and will improve ease of access to emission statements by the State. This elimination of the option to email an

emission statement will also not result in a cost to facilities because RADIUS is available without cost. Furthermore, New Jersey no longer uses diskettes, so the EPA proposes to approve the State's removal of reference to diskettes at N.J.A.C. 7:27–21.4(b)(3)(ii).

In response to New Jersey's revisions at N.J.A.C. 7:27–21.3, existing N.J.A.C. 7:27–21.5(e), which identifies when emissions are reported at the facility-wide level and when they are reported at the source level, is no longer necessary and is proposed by the EPA to be deleted from the State's SIP. In practice, New Jersey states that the regulated community has been reporting emissions of PM<sub>2.5</sub> and ammonia at the source level, and the State already implements this source level reporting procedure to comply with AERR. Existing N.J.A.C. 7:27–21.8(b) provides methods of certifying an emission statement, with (b)(1) governing certification of electronic submittals, and paragraph (b)(2) governing certification of paper submittals. The State's amended rule also provides certification methods, but separates the paragraphs based on whether the emission statement is submitted through NJDEP Online or delivered to NJDEP (on paper or an electronic medium) by mail or courier service. These revisions to certification methods serve as a clarification of the methods used and imposes no additional reporting requirements. New Jersey's amendments which the EPA is proposing to approve with this notice will enhance and provide clarity to PM<sub>2.5</sub> and ammonia emission statement reporting measures, further strengthening the State's SIP.

*Revisions to Subchapter 22 (Related to Air Toxic Thresholds and PM<sub>2.5</sub> in Air Permitting)*

The EPA will address New Jersey's revisions to subchapter 22, "Operating Permits," submitted to the EPA alongside the submittals previously detailed in this notice, with a separate rulemaking action in the future.

*Revisions to Section 3.10 (Subchapter 3 of Chapter 27A) (Related to Exemptions To Improve Resiliency and Air Toxics Thresholds)*

The EPA is proposing to approve New Jersey's revisions to subchapter 3, "Civil Administrative Penalties and Requests for Adjudicatory Hearings," under Chapter 27A, "Air Administrative Procedures and Penalties," to conform the administrative penalties of this Section to the proposed rules in this notice. Pursuant to N.J.A.C. 7:27A–3.10(m), violations of N.J.A.C. 7:27, whether the violations are minor or non-



minor, have corresponding civil administrative penalty amounts for each violation as set forth in the “Civil Administrative Penalty Schedule” of this subchapter. Accordingly, the EPA proposes to approve the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(16) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–16.6(b) through (i) and which the State has requested be removed from the SIP; the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(16) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–16.17(b)(1) and 16.17(e) and which the State has requested be removed from the SIP; the State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(17) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–17.4(a) and (b) and which the State has requested be removed from the SIP; and State’s request to remove from the SIP penalties listed under N.J.A.C. 7:27A–3.10(m)(19) which correspond to the violation of provisions the State repealed at N.J.A.C. 7:27–19.24(b) and which the State has requested be removed from the SIP. Similarly, the EPA proposes to approve New Jersey’s revision to N.J.A.C. 7:27A–3.10(m)(16) which previously corresponded to violation of provisions at N.J.A.C. 7:27–16.6(n) and now corresponds to violation of provisions at N.J.A.C. 7:27–16.6(l). As previously stated, the State’s revisions to this subchapter will conform the administrative penalties of this section to the rule revisions New Jersey submitted to the EPA for approval and ensure consistency throughout N.J.A.C. 7:27, therefore, strengthening New Jersey’s SIP.

### III. Environmental Justice Considerations

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to review state choices, and approve those choices if they meet the minimum criteria of the Act.

New Jersey provided a supplement to the SIP submissions being proposed for approval with this rulemaking on May 16, 2023. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State’s programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. Although New

Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discusses addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the Environmental Equity Task Force in 1998, which eventually became the Environmental Justice Advisory Council (EJAC). These groups hold regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address environmental justice issues of concern.

New Jersey also details having implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. A timeline of New Jersey’s EJ actions implemented, including both prior to and after the SIP submittals addressed within this notice was provided and is indicative of the State’s continued attention to EJ issues within the state.

Administrative Orders (AO) and Executive Orders (E.O.) include New Jersey’s first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. No. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O. No. 131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. No. 23). Notably, U.S. Senator for New Jersey, Cory Booker, introduced the first federal EJ bill in 2017 (S.1996—Environmental Justice Act of 2017).

Additionally, New Jersey also created the “What’s In My Community”<sup>4</sup> tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies the overburdened communities, schools, hospitals, and emergency services (Police and Fire departments). The public users can also see measurements from air monitors using the tool.

The EPA did take EJ into consideration when reviewing New Jersey’s provisions being proposed for approval by the EPA within this notice; however, the EPA determined that a comprehensive analysis of EJ would not be appropriate for the provisions New Jersey submitted for approval. New

Jersey’s provisions being proposed for approval by the EPA within this notice address statewide matters, and since EJ issues are more accurately captured when evaluating relatively smaller areas or on a community level basis, the EPA determined it would not have been appropriate to evaluate EJ concerns at a statewide level. As previously stated, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation of EJ. In addition, there is no information in the record indicating that this action is inconsistent with the stated goal of E.O. 12898 and/or that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

Thus, the EPA expects that this proposed action will generally be neutral or contribute to reduced environmental and health impacts on all populations in New Jersey, including people of color and low-income populations in New Jersey. At a minimum, this action is not expected to worsen any air quality and it is expected this action will ensure the State is meeting requirements to attain and/or maintain air quality standards.

The EPA therefore concludes that this proposed rule will not have or lead to disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns. New Jersey evaluated environmental justice considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of New Jersey’s EJ considerations is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of the State’s evaluation of EJ.

### IV. The EPA’s Proposed Action

The EPA proposes to approve New Jersey’s revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules);” and subchapter 21, “Emission Statements,” with State effective dates of November 6, 2017. In addition, the EPA proposes to approve the State’s revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and

<sup>4</sup> Mapping application used to find facilities with an air permit registered with New Jersey’s Division of Air Quality <https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>. The NJDEP Division of Air Quality.

Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 16, “Control and Prohibition of Air Pollution by Volatile Organic Compounds;” subchapter 17, “Control and Prohibition of Air Pollution by Toxic Substances;” subchapter 19, “Control and Prohibition of Air Pollution by Oxides of Nitrogen;” subchapter 21, “Emission Statements;” and Chapter 27A, subchapter 3.10, “Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act,” with State effective dates of January 16, 2018. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to N.J.A.C. 7:27 subchapter 8, “Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),” section 8.1, “Definitions;” subchapter 16, “Control and Prohibition of Air Pollution by Volatile Organic Compounds;” subchapter 17, “Control and Prohibition of Air Pollution by Toxic Substances;” subchapter 18, “Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules);” subchapter 19, “Control and Prohibition of Air Pollution by Oxides of Nitrogen;” subchapter 21, “Emission Statements;” and Chapter 27A, subchapter 3.10, “Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act” as described in section II, of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law(s) as meeting federal requirements and

does not impose additional requirements beyond those imposed by state law(s). For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, this proposed SIP will not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws,

regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The NJDEP evaluated environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey’s evaluation of environmental justice. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

**Lisa Garcia,**

*Regional Administrator, Region 2.*

[FR Doc. 2023–21138 Filed 9–27–23; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 261

[EPA–R06–RCRA–2023–0040; FRL–11286–01–R6]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

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

**ACTION:** Proposed rule.