

for rehearing is denied, as discussed in the body of this order.

By the Commission.

Issued: May 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–11537 Filed 5–29–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.140 to 1.169), revised as of April 1, 2018, on page 88, in § 1.148–1, paragraph (e)(3) is reinstated to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) * * *

(3) *Certain hedges.* Investment-type property also includes the investment element of a contract that is a hedge (within the meaning of § 1.148–4(h)(2)(i)(A)) and that contains a significant investment element because a payment by the issuer relates to a conditional or unconditional obligation by the hedge provider to make a payment on a later date. See § 1.148–4(h)(2)(ii) relating to hedges with a significant investment element.

* * * * *

[FR Doc. 2018–11690 Filed 5–29–18; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0625, FRL–9978–24–Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM₁₀, 2012 PM_{2.5}, 1997 Ozone, and the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of

New Jersey's State Implementation Plan (SIP) revision submittal regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead, 2008 ozone, 2010 nitrogen dioxide, 2010 sulfur dioxide, 2011 carbon monoxide, 2006 particulate matter of 10 microns or less (PM₁₀), and 2012 particulate matter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The EPA is also approving three infrastructure requirements of the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on June 29, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2016–0625. All documents in the docket are listed on the <http://www.regulations.gov> website. 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 <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3892, or by email at Gardella.Anthony@epa.gov.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

Under sections 110(a)(1) and (2) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of a revised primary or secondary National Ambient Air Quality Standards (NAAQS or standard). CAA sections 110(a)(1) and (2) require each

state to make a new SIP submission within three years after the EPA promulgates a new or revised NAAQS for approval into the existing federally-approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS.

On March 1, 2018 (83 FR 8818), the EPA published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** for the State of New Jersey. The NPR proposed to approve elements of the State of New Jersey's Infrastructure SIP submission, dated October 17, 2014, and as supplemented on March 15, 2017, as meeting the CAA section 110(a) infrastructure requirements for the following NAAQS: 2008 ozone, 2008 lead, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), 2011 carbon monoxide (CO), 2006 particulate matter of 10 microns or less (PM₁₀), and 2012 particulate matter of 2.5 microns or less (PM_{2.5}). Although not specifically required by 110(a)(1) since neither NAAQS was new or revised,¹ the SIP submission included infrastructure requirements for the 2006 PM₁₀ and 2011 CO NAAQS. As explained in the NPR, the State has the necessary infrastructure, resources and general authority to implement the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, except where specifically noted.

The EPA also proposed to approve three CAA section 110(a) infrastructure requirements for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS that were conditionally approved by the EPA on June 14, 2013 (78 FR 35764). New Jersey's response to the conditional approval was not submitted to EPA within one year, but was submitted approximately three months late, and supplemented on March 15, 2017, so the conditional approval is treated as a disapproval. The EPA also proposed to approve New Jersey's October 17, 2014 submittal, as supplemented on March 15, 2017, for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS.

Other detailed information relevant to this action on New Jersey's infrastructure SIP submission, the requirements of infrastructure SIPs and the rationale for the EPA's proposed action are explained in the NPR and the associated Technical Support Document (TSD) in the docket and are not restated here.

¹ EPA notes that, when promulgated, the 2006 24 hour PM₁₀ NAAQS and the 2011 primary CO NAAQS were neither "new" nor "revised" NAAQS—they merely retained, without revision, prior NAAQS for those pollutants. Accordingly, promulgation of these NAAQS did not trigger a new obligation for New Jersey to make infrastructure SIP submissions.

II. What comments were received in response to the EPA's proposed action?

In response to the EPA's March 1, 2018 proposed rulemaking on New Jersey's infrastructure SIP submission dated October 17, 2014, and as supplemented on March 15, 2017, the EPA received fifteen comments from the public during the 30-day public comment period. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. None of the comments raise issues germane to the EPA's proposed action. For this reason, the EPA will not provide a specific response to the comments. The comments may be viewed under Docket ID Number EPA-R02-OAR-2016-0625 on the <http://www.regulations.gov> website.

III. What action is the EPA taking?

The EPA is approving New Jersey's infrastructure submittal dated October 17, 2014, as supplemented on March 15, 2017, for the 2008 ozone, 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically sections 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD and the permitting program for minor sources and minor modifications), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD and visibility), (K), (L), and (M) of the CAA.

The EPA is not taking action on the following elements that are not germane to infrastructure SIPs: sections 110(a)(2)(C) (sub-element related to nonattainment permitting); 110(a)(2)(I); and the visibility requirements of section 110(a)(2)(J). In addition, with respect to 2008 lead, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, the EPA previously took action on CAA element 110(a)(2)(D)(i)(II) [prongs 3 and 4] and will take action on CAA element 110(a)(2)(D)(i)(I) [prongs 1 and 2] at a later date. As noted in the NPR, New Jersey withdrew the portion of its October 17, 2014 SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS.

Also, with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS, the EPA is approving that New Jersey has met the infrastructure SIP requirements pertaining to sections 110(a)(2)(E)(ii) [conflict of interest] and (E)(iii) [oversight of local governments and local authorities]; and with respect

to the 1997 ozone NAAQS, we are approving that New Jersey has met the infrastructure SIP requirements pertaining to section 110(a)(2)(G) [emergency powers].

The EPA is deleting the deficiency at 40 CFR 52.1579 because the deficiency identified is resolved by the approval of CAA section 110(a)(2)(E)(iii) for each of the NAAQS indicated in this action.

In addition, the EPA is incorporating into the New Jersey SIP the following regulation and statutes:

N.J.S.A. 52:13D-14, 52:13D-16(a)-(b) and 52:13D-21(n) "New Jersey's Conflict of Interest Law,"²

N.J.A.C 7:27-12, "Prevention and Control of Air Pollution Emergencies."³

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the regulation and statutes identified at the bottom of Section III of this rule. The EPA has made, and will continue to make, these documents generally available through 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). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

² N.J.S.A. 52:13D-14 (effective January 11, 1972). 52:13D-16 (effective January 11, 1972); most recent amendment to 52:13D-16, (September 16, 1996). 52:13D-21 (effective January 11, 1972), subsection 52:13D-21(n) (effective March 15, 2006).

³ N.J.A.C 7:27-12 (state effective October 24, 1969 as amended May 20, 1974).

⁴ 62 FR 27968 (May 22, 1997).

imposed by state law. For that reason, this 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 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- 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; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to 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 rule does 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may

not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: May 8, 2018.

Peter D. Lopez,
Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart FF—New Jersey

■ 2. In § 52.1570:

■ a. The table in paragraph (c) is amended by:

■ i. Revising the table heading;

■ ii. Revising the entry for “Title 7, Chapter 27, Subchapter 12”; and

■ iii. Adding entries for “N.J.S.A. 52:13D–14,” “52:13D–16(a)–(b),” and “52:13D–21(n)” at the end of the table; and

■ b. The table in paragraph (e) is amended by adding an entry for “NJ Infrastructure SIP for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM₁₀, 2012 PM_{2.5}, 1997 Ozone, and the 1997 and 2006 PM_{2.5} Standards” at the end of the table.

The revisions and additions read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Title 7, Chapter 27, Subchapter 12.	Prevention and Control of Air Pollution Emergencies.	May 20, 1974	May 30, 2018, [Insert Federal Register citation].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
N.J.S.A. 52:13D–14	New Jersey’s Conflict of Interest Law.	January 11, 1972	May 30, 2018, [Insert Federal Register citation].	
N.J.S.A. 52:13D–16(a)–(b)	New Jersey’s Conflict of Interest Law.	September 16, 1996	May 30, 2018, [Insert Federal Register citation].	
N.J.S.A. 52:13D–21(n)	New Jersey’s Conflict of Interest Law.	March 15, 2006	May 30, 2018, [Insert Federal Register citation].	

* * * * * (e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
NJ Infrastructure SIP for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM ₁₀ , 2012 PM _{2.5} , 1997 Ozone, and the 1997 and 2006 PM _{2.5} Standards.	State-wide	October 17, 2014 and supplemented on March 15, 2017.	May 30, 2018, [Insert Federal Register citation].	

§ 52.1579 [Removed and Reserved]

■ 3. Section 52.1579 is removed and reserved.

■ 4. Section 52.1586 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Removing and reserving paragraph (a)(3); and

■ c. Adding a sentence at the end of paragraph (b)(1).

The revision and addition read as follows:

§ 52.1586 Section 110(a)(2) infrastructure requirements.

(a) * * *

(1) *Approval*. In a February 25, 2008 submittal and supplemented on January 15, 2010, and in an October 17, 2014 submittal, as supplemented on March 15, 2017, New Jersey certified that the State has satisfied the Clean Air Act (CAA) infrastructure requirements of section 110(a)(2) for the 1997 8-hour

ozone and the 1997 and 2006 PM_{2.5} NAAQS requirements of CAA sections 110(a)(2)(A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

* * * * *

(b) * * *

(1) * * * Submittal from New Jersey dated October 17, 2014, as supplemented on March 15, 2017, to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO₂, 2010 SO₂, 2012 PM_{2.5}, 2006 PM₁₀, and 2011 CO NAAQS is approved for (A), (B), (C) (enforcement program only), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

* * * * *

[FR Doc. 2018-10801 Filed 5-29-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA-HQ-OLEM-2018-0185; FRL-9977-56-OLEM]

Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is revising regulations associated with the definition of solid waste under the Resource Conservation and Recovery Act. These revisions implement vacatur orders by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on July 7, 2017, as modified on March 6, 2018.

DATES: This final rule is effective on May 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2018-0185. All documents in the docket are listed in the www.regulations.gov index. 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 either electronically through www.regulations.gov or in hard copy at the EPA Docket Center. See <https://www.epa.gov/dockets/epa-docket-center-reading-room> for more information on the Public Reading Room.

FOR FURTHER INFORMATION CONTACT:

Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Tracy Atagi, at (703) 308-8672, (atagi.tracy@epa.gov).

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. General Information
- II. Statutory Authority
- III. Which regulations is EPA removing and replacing?
- IV. When will the final rule become effective?
- V. State Authorization
- VI. Statutory and Executive Order (E.O.) Reviews

I. General Information

A. Does this action apply to me?

This final rule applies to facilities that generate or recycle hazardous secondary materials (HSM). According to the revisions to the definition of solid waste promulgated in 2015, entities potentially affected by the original rule include over 5,000 industrial facilities in 634 industries (at the 6-digit North American Industry Classification System (NAICS) code level).¹ Most of these 634 industries have relatively few entities that are potentially affected. The top-5 economic sectors (at the 2-digit NAICS code level) with the largest number of potentially affected entities are as follows: (1) 41% in NAICS code 33—the manufacturing sector, which consists of metals, metal products, machinery, computer & electronics, electrical equipment, transportation equipment, furniture, and miscellaneous manufacturing subsectors, (2) 23% in NAICS code 32—the manufacturing sector, which consists of wood products, paper, printing, petroleum & coal products, chemicals plastics & rubber products, and nonmetallic mineral products manufacturing subsectors, (3) 3.0% in NAICS code 92—the public administration sector, (4) 2.9% in NAICS code 61—the educational services sector, and (5) 2.8% in NAICS code 54—the professional, scientific and technical services sector.

B. Why is EPA issuing a final rule?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for revising these provisions without prior proposal and opportunity for comment, because these revisions simply undertake the ministerial task of implementing court orders vacating these rules and reinstating the prior versions. As a matter of law, the orders issued by the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017 and amended on March 6, 2018, (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions); (2) reinstated the transfer-based exclusion from the 2008 rule to replace the now-vacated 2015 verified recycler exclusion; (3) upheld the containment and emergency preparedness provisions of the 2015 rule; (4) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety; and (5) reinstated the 2008 version of Factor 4 to replace the now-vacated 2015 version of Factor 4.² It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which merely carries out the court's orders.

In addition, EPA finds that it has good cause to make the revisions immediately effective under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and section 3010(b) of RCRA, 42 U.S.C. 6930(b). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, "except . . . as otherwise provided by the agency for good cause," among other exceptions. The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time

² *API v. EPA*, 862 F.3d 50 (DC Cir. 2017), *reh'g granted*, No. 09-1038, 2018 U.S. App. LEXIS 5613 (DC Cir. Mar. 6, 2018).

¹ 80 FR 1694/2, January 13, 2015.