

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R02-OAR-2024-0110, FRL-12093-02-R2]

Air Plan Approval; New Jersey; NO_x SIP Call and Removal of CAIR**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the removal of the New Jersey Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) Trading Program regulations from the New Jersey State Implementation Plan (SIP) and is conditionally approving the removal of the New Jersey NO_x Budget Program regulations from the New Jersey SIP. On August 23, 2018, the New Jersey Department of Environmental Protection (NJDEP) submitted a SIP revision requesting the removal of the State's CAIR NO_x Trading Program and NO_x Budget Program regulations from the New Jersey SIP. NJDEP submitted a supplement to the revision on May 31, 2024, that commits NJDEP to develop a Memorandum of Agreement with the EPA that indicates how the State of New Jersey will maintain compliance with the State's NO_x SIP Call obligations for the types of large non-electricity generating units (non-EGUs) that were previously regulated under the New Jersey NO_x Budget Program.

DATES: This rule is effective on October 3, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2024-0110, at <https://www.regulations.gov>. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as 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>.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA.

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

- I. Background
- II. What comments were received in responses to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews

I. Background

On July 18, 2024, the EPA proposed to approve the removal of the New Jersey Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) Trading Program regulations from the New Jersey State Implementation Plan (SIP) and proposed to conditionally approve the removal of the New Jersey NO_x Budget Program regulations from the New Jersey SIP. See 89 FR 58306.

In that proposed action, the EPA proposed approval of the removal of the New Jersey CAIR NO_x Trading Program (N.J.A.C. 7:27—Subchapter 30) from the New Jersey SIP. The State rule established allowance allocations for use under the Federal CAIR trading programs. Since the EPA no longer administers the Federal CAIR trading programs, the removal of Subchapter 30 from the SIP will have no consequences for any sources' operations or emissions or for the attainment or maintenance of the NAAQS in any area, now or in the future.

In the July 2024 proposed rulemaking, the EPA also proposed to conditionally approve the removal of the New Jersey NO_x Budget Program (N.J.A.C. 7:27—Subchapter 31) from the New Jersey SIP. Although EPA no longer administers the NO_x Budget Trading Program and approved the sunset provision of the New Jersey NO_x Budget program in a previous action (see 72 FR 55672), New Jersey has outstanding obligations under the NO_x SIP Call.¹ Accordingly, on March 7, 2024, and May 31, 2024, NJDEP submitted letters committing the State to submit an Memorandum of Agreement (MOA) that will outline how NJDEP will comply with the NO_x SIP Call for the types of non-EGUs previously regulated by the New Jersey NO_x Budget Program by March 7, 2025.

In the State's March 7, 2024, commitment letter, New Jersey

¹ New Jersey's large non-EGUs no longer participate in a NO_x Ozone season trading program, the NO_x SIP Call regulations at 40 CFR 51.121(r)(2) as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e) require the State to meet its ongoing obligations under the NO_x SIP call with respect of these types of non-EGUs in an alternative manner.

committed to develop a MOA between the EPA and NJDEP that outlines how NJDEP will comply with the NO_x SIP Call, specifically for the types of non-EGUs that were previously regulated by the New Jersey NO_x Budget Program (N.J.A.C. 7:27—Subchapter 31) and were not included in the subsequent CAIR FIP trading program.

Subsequently, on May 31, 2024, New Jersey submitted an updated commitment letter to revise and replace the previous March 7, 2024, letter. This revision occurred due to NJDEP conducting further analysis to determine what units would have been classified as a non-EGU under the applicability criteria of the New Jersey NO_x Budget Program (N.J.A.C. 7:21—Subchapter 31), as in effect as of September 30, 2008. As a result of this analysis, the value of the non-EGU budget was adjusted.² The revised letter adjusted the non-EGU budgets for the affected units' aggregated emissions during the ozone season and revised the date by which the State will submit the MOA to the EPA. In New Jersey's May 31, 2024, letter, the State commits to submitting the MOA to the EPA by no later than March 7, 2025. New Jersey provided a date certain for purposes of CAA 110(k)(4), which authorizes the EPA to conditionally approval a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain, but no later than one year after the date of the plan approval. As indicated in New Jersey's commitment letter, the EPA would take action to incorporate by reference the finalized MOA as an enforceable SIP revision by no later than one year from the date the EPA conditionally approves the New Jersey SIP revision—Removal of CAIR and NO_x Budget Programs, which was submitted on August 23, 2018.

The specific details of New Jersey's SIP Submittals, subsequent commitment letter which outlines the content of the forthcoming MOA, and the rationale for the EPA's final action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's July 18, 2024, proposed rulemaking (89 FR 58306).

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

In response to EPA's July 10, 2024, proposed rulemaking on New Jersey's

² NJDEP analysis determined that the natural gas turbine unit located at cogeneration facility, EF Kenilworth, was subject to the NO_x Budget Program as a small EGU (*i.e.*, an EGU serving an electricity generator with nameplate capacity of at least 15 MW but not greater than 25 MW).

SIP revisions, the EPA received one supportive comment during the 30-day public comment period. The specific comment may be viewed under Docket ID number EPA-R02-OAR-2024-0110 on the <http://www.regulations.gov> website.

Comment: A private citizen commenter supports the EPA's proposed rule to approve the removal of New Jersey's CAIR program, as well as the conditional approval of the removal of the NO_x Budget Program since, ". . . the proposed rule aligns itself with the Clean Air Act and acts in accordance with the spirit of progress. The removal of these programs will not adversely affect air quality or compliance."

Response: The EPA acknowledges the commenter's support of the EPA's proposed rule.

This concludes our response to the comments received. No changes have been made to the final rule.

III. What action is the EPA taking?

On August 23, 2018, NJDEP submitted a SIP revision requesting that the EPA update the New Jersey SIP to reflect the removal of New Jersey's CAIR NO_x Trading Program establishing the State's allowance allocations under the Federal CAIR trading programs (Subchapter 30) and New Jersey's NO_x Budget Program (Subchapter 31) from the SIP. The State rule provision sunsetting the State's NO_x Budget Program was already approved into the SIP by EPA in 2007, and the State's CAIR allowance allocation rules have had no effect since EPA discontinued administration of the Federal CAIR trading programs after 2014. NJDEP repealed Subchapter 30 and Subchapter 31 on December 14, 2017.

As discussed previously in Section I, NJDEP provided commitment letters to the EPA on March 7, 2024 and May 31, 2024, committing to develop a MOA between the EPA and the NJDEP that outlines how NJDEP will comply with the State's obligations under the NO_x SIP Call for the types of non-EGUs that were previously regulated by the New Jersey NO_x Budget Program and that were not included in the subsequent CAIR FIP trading program. Once approved into the New Jersey SIP, the MOA will ensure compliance with the New Jersey non-EGU budget per 40 CFR 51.121(r). Specifically, the MOA will serve as the enforceable mechanism for ensuring the New Jersey SIP contains enforceable limits and monitoring, recordkeeping, and reporting requirements to ensure the affected New Jersey non-EGU units' aggregated emissions will not exceed a budget of

745 tons per ozone season on an annual basis for existing and new units.

In this final rule, the EPA approves the removal of the New Jersey CAIR NO_x Trading Program (Subchapter 30) from the New Jersey SIP. The State rule established allowance allocations for use under the Federal CAIR trading programs. Because the EPA no longer administers the Federal CAIR trading programs, the removal of Subchapter 30 from the SIP will have no consequences for any sources' operations or emissions or for the attainment or maintenance of the NAAQS in any area, now or in the future.

In this final rule, the EPA is also conditionally approving the removal of the New Jersey NO_x Budget Program (Subchapter 31) from the New Jersey SIP. Although the EPA no longer administers the NO_x Budget Trading Program and approved the sunset provision of the New Jersey NO_x Budget program in a previous action (*see* 72 FR 55672), New Jersey has outstanding obligations under the NO_x SIP Call. Accordingly, on May 31, 2024, NJDEP submitted a letter committing NJDEP to submit an MOA that will outline how NJDEP will comply with the NO_x SIP Call for the types of non-EGUs previously regulated by the New Jersey NO_x Budget Program by March 7, 2025.

Under CAA section 110(k)(4), conditional approval is an option for EPA SIP approvals based on a commitment to adopt specific enforceable measures by a date certain, but no later than one year from the date of approval. If the state fails to meet its commitment within the specified date, this approval is treated as a disapproval. Since the MOA between NJDEP and the EPA will be enforceable only when approved by the EPA and codified through incorporating by reference in the EPA-approved statutes and regulations in the New Jersey SIP at 40 CFR 52.1570, it will be necessary for the EPA to take this action no later than one year from the date of this conditional approval.

Based on the State's May 31, 2024, commitment to submit a SIP revision by March 7, 2025, addressing the identified deficiency and the EPA taking action to approve the MOA as an enforceable SIP revision no later than one year from the date the EPA finalizes this conditional approval, the EPA is conditionally approving the portion of the August 23, 2018, SIP revision requesting the removal of the New Jersey NO_x Budget Program (Subchapter 31) from the New Jersey SIP. EPA will take action to approve or disapprove the MOA into the New Jersey SIP when it is submitted to the EPA as a SIP revision.

However, if the State fails to submit this revision, or if EPA does not approve the MOA as an enforceable SIP revision on or before 12 months from the date of final approval of this action, this conditional approval will become a disapproval and the EPA will issue a notice to that effect. If the conditional approval becomes a disapproval, the disapproval triggers the requirement for EPA to issue a Federal Implementation Plan (FIP) under CAA section 110(c) to correct the deficiency.

Section 110(l) Demonstration

As stated in New Jersey's May 2024 commitment letter, the State commits to enter a Memorandum of Agreement between the USEPA and the NJDEP that outlines how NJDEP will comply with the NO_x SIP Call, specifically for the types of non-electric generating units (non-EGUs) that were previously regulated by the New Jersey NO_x Budget Program (N.J.A.C. 7:27—Subchapter 31) and that were not included in the subsequent CAIR FIP trading program. On June 19, 2007, New Jersey adopted rules establishing allowance allocations for the State's EGUs participating in the ozone season NO_x trading program established under the CAIR FIP but excluded non-EGU industrial units from its rulemaking. Under both the NO_x Budget Program and CAIR, the affected units were required to monitor pursuant to 40 CFR part 75. The EGUs that remained in the CAIR trading program continued to comply with the monitoring requirements. However, because the EPA approved the sunset of the State's NO_x Budget Program requirements in the SIP and the non-EGUs were not brought into the CAIR FIP trading program, the non-EGUs did not retain those monitoring requirements. Instead, applicable non-EGUs relied on monitoring requirements under New Jersey's emission statement program (N.J.A.C. 7:27–21), the State's various NO_x RACT regulations (N.J.A.C. 7:27–19), and associated air permits to continue to demonstrate compliance with the 745 tons per ozone season budget set under the NO_x Budget Program.

The MOA will serve to memorialize an aggregate state-wide budget and monitoring and reporting requirements for the affected non-EGU units as well as official annual ozone season NO_x reporting by the State to the EPA. Specifically, the MOA will specify that the non-EGU budget for the affected units' aggregated emission will not exceed 745 tons per ozone season (May 1–September 30 of each year). To ensure that non-EGUs satisfy the requirements under the NO_x SIP Call, the MOA will

specify how the emission limits and monitoring, recordkeeping, and reporting requirements contained in New Jersey's SIP address the requirements under 40 CFR 51.121(r)(2). Specifically, the MOA will include a demonstration that the total permitted NO_x emission limits for existing applicable New Jersey non-EGUs does not exceed 745 tons per ozone season (May 1–September 30 of each year). The MOA will also include demonstrations that outline actual NO_x emissions from recent ozone seasons (tons/year) and calendar years (tons/year) that were gathered from the State's Emission Statement Program. Also, the MOA will outline New Jersey's SIP-approved regulations and associated permit requirements for non-EGU facilities regarding continuous emission monitoring and source emission testing. These demonstrations will be incorporated within the MOA, and the MOA also provides for New Jersey to continue to provide similar reports on ozone season emissions to EPA for each ozone season in perpetuity and to take corrective measures should permitted emissions limits be exceeded. Taken as a whole, EPA believes that in concept, the MOA as described (and if signed and made effective) will address New Jersey's outstanding obligations under the NO_x SIP Call and demonstrates that the removal of New Jersey's NO_x Budget Program (7:27–31) from the SIP will have no consequences for any sources' operations or emissions or for the attainment or maintenance of the NAAQS in any area, now or in the future. Furthermore, on October 1, 2007, the EPA had approved a sunset provision of New Jersey NO_x Budget Program. See 72 FR 55666. This federally-approved sunset provision ended New Jersey's NO_x Budget Program for all sources that were previously covered sources, beginning in 2009. The EPA will take final action to incorporate by reference New Jersey's MOA in a future rulemaking action.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. The EPA is finalizing the removal of Title 7, Chapter 27, Subchapter 30, *Clean Air Interstate Rule (CAIR) NO_x Trading Program*; Title 7, Chapter 27, Subchapter 31, *NO_x Budget Program*, from the New Jersey SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51, and as discussed in Section I of this preamble. EPA has made and will continue to make the State Implementation Plan generally available

at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Environmental Justice Considerations

New Jersey provided a supplement to the SIP submission being finalized 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 discussed how the State has been addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the Environmental Equity Task Force, which later evolved into the Environmental Justice Advisory Council (EJAC). EJAC and its predecessor have held regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address issues of concern.

New Jersey has also noted that the State has implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. New Jersey provided a timeline of the EJ actions implemented by the State, both prior to the SIP submittal on August 23, 2018, and subsequent to it, to note its continued attention to environmental justice in the State.

New Jersey's Administrative Orders (AO) and Executive Orders (E.O.) include the State'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?”³ tool,

³ Access the mapping application for locating facilities with an air permit registered with NJDEP's Division of Air Quality from their website at <https://njdep.maps.arcgis.com/app4s/webappviewer/index.html?id=76194937cbb46b1ab9a9ec37c7d709b>.

a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies overburdened communities, schools, hospitals, and emergency services. The public users can also see measurements from air monitors and generate a report when using the tool.

The EPA has reviewed this material but has determined that conducting a comprehensive EJ analysis is not necessary in the context of this SIP submission for the removal from the SIP of New Jersey's CAIR NO_x Trading Program and the State's NO_x Budget Program, as the CAA and its applicable implementing regulations neither prohibit nor require such an evaluation of EJ in relation to the relevant requirements. Additionally, there is no evidence suggesting that this action contradicts the goals of E.O. 12898 or that it will disproportionately harm any specific group or have severe health or environmental impacts.

However, the EPA expects that this action, which assesses whether New Jersey's SIP adequately addresses requirements under the NO_x SIP Call for affected non-EGUs, will generally have a neutral impact on all populations, including communities of color and low-income groups. At the very least, it will not worsen existing air quality.

In summary, the EPA concludes, for informational purposes only, that this final rule will not disproportionately harm communities with environmental justice concerns. New Jersey did evaluate EJ considerations voluntarily in its SIP submission, but the EPA's assessment of these considerations is provided for context, not as the basis for the action. The EPA is taking action under the CAA independently of the State's EJ assessment.

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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 final rulemaking action pertaining to New Jersey’s SIP revision, is not approved to apply on any Indian reservation land or in any other area where the 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).

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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. 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 communities with EJ concerns.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. 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 November 4, 2024. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, oxides of nitrogen.

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

Lisa Garcia,
Regional Administrator, Region 2.

For the reasons set forth in the preamble, 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

§ 52.1570 [Amended]

■ 2. In § 52.1570, the table in paragraph (c) is amended by removing the entries “Title 7, Chapter 27, Subchapter 30” and “Title 7, Chapter 27, Subchapter 31.”

[FR Doc. 2024–19699 Filed 8–30–24; 8:45 am]

BILLING CODE 6560–50–P