



## 40 CFR Part 52

[EPA-R02-OAR-2023-0252; FRL-11034-02-R2]

### **Approval of Air Quality Implementation Plans; New Jersey; Exemptions to Improve Resiliency, Air Toxics Thresholds, PM 2.5 and Ammonia Emission Statement Reporting, and PM 2.5 in Air Permitting**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving 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 approving with this notice of final rulemaking, will conform administrative penalties to the approved rules and correct errors and inconsistencies throughout the State's SIP. This action is being taken in accordance with the requirements of the Clean Air Act. The EPA proposed to approve this rule on September 28, 2023, and received no comments.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2023-0252. All documents in the docket are listed on the <https://www.regulations.gov> web site. 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:**

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**SUPPLEMENTARY INFORMATION:**

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**I. What is the background for this action?**

On September 28, 2023 (88 FR 66733), the EPA published a Notice of Proposed Rulemaking that proposed to approve State Implementation Plan (SIP) revisions submitted by the State of New Jersey on December 14, 2017, and August 23, 2018, for the purpose of approving new rules, repeals, and amendments to subchapter 8, subchapter 16, subchapter 17, subchapter 18, subchapter 19, and subchapter 21 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 finalized for approval within this notice. For the reasons herein stated, the EPA is approving the revisions made by New Jersey to strengthen the effectiveness of the State's SIP.

The specific details of New Jersey's SIP submittals and the rationale for the EPA's approval 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 September 28, 2023, proposed rulemaking (88 FR 66733).

## **II. 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.

The specific details of New Jersey's Environmental Justice (EJ) considerations 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 September 28, 2023, proposed rulemaking (88 FR 66733).

Furthermore, as the EPA stated in the proposed rulemaking, although New Jersey included EJ considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. New Jersey's provisions being approved 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.

The EPA expects that this final action will 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 final 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 final action will not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns.

### **III. What comments were received in response to the EPA's proposed action?**

The EPA provided a 30-day review and comment period for the September 28, 2023, proposed rule. The comment period ended on October 30, 2023. The EPA received no comments on this action; therefore, the EPA is finalizing action as proposed.

### **IV. What action is the EPA taking?**

The EPA is approving 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;" and subchapter 21, "Emission Statements," submitted to EPA on December 14, 2017 (State effective November 6, 2017), and as further updated in a SIP revision to EPA on August 23, 2018 (State effective January 16, 2018).

The EPA is also approving New Jersey's revisions to N.J.A.C. 7:27 subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air

Quality (Emission Offset Rules),” submitted to EPA on December 14, 2017 (State effective November 6, 2017).

In addition, the EPA is approving the State’s revisions to N.J.A.C. 7:27 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;” and Chapter 27A, subchapter 3.10, “Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act,” submitted to EPA on August 23, 2018 (State effective January 16, 2018).

## **V. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation 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 discussed in Section I. 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). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **VI. 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 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 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 (Public Law 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;

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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, the SIP 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 it 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, February 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 EJ 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 EJ considerations is described in detail under the section titled, “Environmental Justice Considerations,” within the September 28, 2023, Notice of Proposed

Rulemaking (88 FR 66733). 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 EJ. 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 EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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, 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.*

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**

2. In §52.1570, the table in paragraph (c) is amended by:

a. Removing the entry for “Title 7, Chapter 27, Section 8.1 and 8.2”;

b. Adding entries for “Title 7, Chapter 27, Section 8.1” and “Title 7, Chapter 27, Section 8.2” in numerical order after the entry Title 7, Chapter 27, Subchapter 8; and

c. Revising the entries for “Title 7, Chapter 27, Subchapter 16”, “Title 7, Chapter 27, Subchapter 17”, “Title 7, Chapter 27, Subchapter 18”, “Title 7, Chapter 27, Subchapter 19”, “Title 7, Chapter 27, Subchapter 21”, and “Title 7, Chapter 27A, Subchapter 3.10”.

The revisions and additions read as follows:

**§52.1570 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS**

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Title 7, Chapter 27, Section 8.1	Definitions	January 16, 2018	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation].

Title 7, Chapter 27, Section 8.2	Applicability	June 20, 1994	August 7, 1997, 62 FR 42412	
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Title 7, Chapter 27, Subchapter 16	Control and Prohibition of Air Pollution by Volatile Organic Compounds	January 16, 2018	<b>[insert date of publication in the Federal Register]</b>	• EPA approval finalized at <b>[insert Federal Register citation]</b> .
Title 7, Chapter 27, Subchapter 17	Control and Prohibition of Air Pollution by Toxic Substances	January 16, 2018	<b>[insert date of publication in the Federal Register]</b>	• EPA approval finalized at <b>[insert Federal Register citation]</b> .
Title 7, Chapter 27, Subchapter 18	Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)	November 6, 2017	<b>[insert date of publication in the Federal Register]</b>	• EPA approval finalized at <b>[insert Federal Register citation]</b> .
Title 7, Chapter 27, Subchapter 19	Control and Prohibition of Air Pollution by Oxides of Nitrogen	January 16, 2018	<b>[insert date of publication in the Federal Register]</b>	• EPA approval finalized at <b>[insert Federal Register citation]</b> . • Subchapter 19 is approved into the SIP except for the following provisions: (1) Phased compliance plan through repowering in Section 19.21 that allows for implementation beyond May 1, 1999; and (2) phased compliance plan through the use of innovative control technology in Section 19.23 that allows for implementation beyond May 1, 1999.

Title 7, Chapter 27, Subchapter 21	Emission Statements	January 16, 2018	<b>[insert date of publication in the Federal Register]</b>	<ul style="list-style-type: none"> <li>• EPA approval finalized at <b>[insert Federal Register citation]</b>.</li> <li>• Section 7:27-21.3(b)(1) and 7:27-21.3(b)(2) of New Jersey's Emission Statement rule requires facilities to report on the following pollutants to assist the State in air quality planning needs: Hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1, 1, 1 trichloroethane, carbon dioxide and methane. EPA will not take SIP-related enforcement action on these pollutants.</li> </ul>
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Title 7, Chapter 27A, Subchapter 3.10	Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act	January 16, 2018	<b>[insert date of publication in the Federal Register]</b>	<ul style="list-style-type: none"> <li>• EPA approval finalized at <b>[insert Federal Register citation]</b>.</li> </ul>
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[FR Doc. 2023-26022 Filed: 11/27/2023 8:45 am; Publication Date: 11/28/2023]