



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2024-0110, FRL-12093-01-R2]

#### **Air Plan Approval; New Jersey; NO<sub>x</sub> SIP Call and Removal of CAIR**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the removal of the New Jersey Clean Air Interstate Rule (CAIR) nitrogen oxides (NO<sub>x</sub>) Trading Program regulations from the New Jersey State Implementation Plan (SIP) and is proposing to conditionally approve the removal of the New Jersey NO<sub>x</sub> 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<sub>x</sub> Trading Program and NO<sub>x</sub> 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<sub>x</sub> SIP Call obligations for the types of large non-electricity generating units (non-EGUs) that were previously regulated under the New Jersey NO<sub>x</sub> Budget Program.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-

OAR-2024-0110, at <https://www.regulations.gov>. 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>. 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 CUI 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 CUI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

The **Supplementary Information** section is arranged as follows:

- I. Background
- II. EPA's Evaluation and Proposed Action
- III. Environmental Justice Considerations
- IV. Statutory and Executive Order Reviews

## I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, States are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state. In October 1998 (63 FR 57356), the EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NOx SIP Call).<sup>1</sup> The NOx SIP Call required Eastern States, including New Jersey, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets. The NOx SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone.<sup>2</sup> To help implement the NOx SIP Call, EPA developed the NOx Budget Trading Program, a regional allowance trading program. States could meet most of their obligations under the NOx SIP Call by requiring certain types of sources to participate in this trading program: generally, EGUs with capacity greater than 25 megawatts (MW)<sup>3</sup> and large non-EGUs, such as industrial boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr).

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<sup>1</sup> The EPA issued subsequent technical amendments to the NOx SIP Call in May 1999 (64 FR 26298) and March 2000 (65 FR 11222).

<sup>2</sup> As originally promulgated, the NOx SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. See 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

<sup>3</sup> In some States, EGUs smaller than 25 MW were also part of EPA's NOx Budget Trading Program.

NJDEP submitted a SIP revision including amendments to the regulation N.J.A.C. 7:27-31 (otherwise known as subchapter 31), “NOx Budget Program”, on December 10, 1999,<sup>4</sup> to comply with the NOx SIP Call requirements. The EPA approved the revision as meeting the requirements of the NOx SIP Call in 2001. See 66 FR 28063 (May 22, 2001). The approved revision required EGUs with capacity greater than 15 MW and large non-EGUs in the State to participate in the State’s NOx Budget Program beginning in 2003.

In 2005, EPA published CAIR, which required Eastern States, including New Jersey, to submit SIPs that prohibited emissions consistent with revised ozone season (and annual) NOx budgets. See 70 FR 25162 (May 12, 2005); see also 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and the 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS and was designed to mitigate the impact of transported NOx emissions with respect to ozone and PM<sub>2.5</sub>. CAIR established several trading programs that States could join through SIPs or that EPA would implement through Federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state; States also retained the option to submit SIPs that achieved the required emission reductions from other types of sources.<sup>5</sup> When the CAIR trading program for ozone season NOx was implemented beginning on January 1, 2009, the EPA discontinued administration of the NOx Budget Trading Program; however, the requirements of the NOx SIP Call continued to apply. For large non-EGUs that would have been covered under the NOx Budget Trading Program, States were allowed, but not obligated, to achieve the required emissions reductions from these types of units by including the units in the CAIR trading program for ozone season NOx.

On October 1, 2007, the EPA approved revisions to New Jersey’s SIP that used the CAIR FIP trading program for ozone season NOx to address the State’s obligations

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<sup>4</sup> The SIP revision was further supplemented by New Jersey on July 31, 2000.

<sup>5</sup> CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NOx emissions, and annual NOx emissions.

under the NOx SIP Call related to EGUs. Consistent with CAIR's requirements, EPA approved a SIP revision in which New Jersey regulations: (1) adopted State rule provisions modifying the allowance allocation provisions of the CAIR FIP applicable to New Jersey, and (2) sunset New Jersey's NOx Budget Program requirements. See 72 FR 55672. Specifically, New Jersey adopted under N.J.A.C. 7:27-30 (otherwise known as subchapter 30), the CAIR NOx Trading Program, provisions for allocating allowances under the CAIR FIP NOx annual and ozone season trading programs.<sup>6</sup> Additionally, New Jersey adopted at N.J.A.C. 7:27-31.23, a sunset provision, which established that the Federal CAIR NOx Ozone Season Trading Program as modified by New Jersey's SIP revision would replace New Jersey's NOx Budget Program (Subchapter 31) starting in 2009.

Participation of New Jersey's EGUs in CAIR's ozone season NOx trading program pursuant to a FIP achieved the emissions reductions necessary to address the State's obligation under the NOx SIP Call for those units. However, consistent with the flexibility given to States in the CAIR FIP, New Jersey chose not to expand the applicability provisions of CAIR's NOx ozone season trading program to include the types of non-EGUs that had been included in the State's NOx Budget program.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. See *North Carolina v. EPA*, 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NOx annual and ozone season trading programs beginning in 2009, and the SO<sub>2</sub> annual trading program beginning in

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<sup>6</sup> New Jersey's rule did not modify the CAIR FIP regarding SO<sub>2</sub>.

2010.

In response to the D.C. Circuit's remand of CAIR, the EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS. See 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in Eastern States, including New Jersey, to meet annual and ozone season NO<sub>x</sub> emission budgets and annual SO<sub>2</sub> emission budgets implemented through new trading programs. CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Following litigation-related delays, EPA stopped administering the CAIR trading programs with respect to emissions occurring after December 31, 2014, and began implementing the CSAPR trading programs with respect to emissions occurring on and after January 1, 2015.

In July 2015, the D.C. Circuit generally upheld CSAPR but remanded several state budgets, including New Jersey's ozone season NO<sub>x</sub> budget, to EPA for reconsideration. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 129-30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO<sub>x</sub> budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed Eastern States' good neighbor obligations for the 2008 ozone NAAQS. See 81 FR 74504 (October 26, 2016). The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO<sub>x</sub> ozone season trading program beginning with the 2017 ozone season.

The CSAPR Update was subject to legal challenge in the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); see also *New York v. EPA*, 781 Fed. App'x 4 (D.C. Cir. 2019). In response to the *Wisconsin* remand of the CSAPR Update, the EPA promulgated the Revised CSAPR Update, which established new or amended FIPs for 12

States, including New Jersey. See 86 FR 23054 (April 30, 2021). The FIPs required the implementation of revised emissions budgets for EGUs beginning with the 2021 ozone season.

In 2023, the EPA published the Federal Good Neighbor Plan (GNP), which established requirements to address 23 States' good neighbor obligations for the 2015 ozone NAAQS. See 88 FR 36654 (June 5, 2023). Under the FIP requirements for the GNP, EGUs in 22 States, including New Jersey, were required to participate in a revised version of the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program beginning in the 2023 ozone season.<sup>7</sup>

States have options to replace the FIPs promulgated under CSAPR, the CSAPR Update, the Revised CSAPR Update, and the GNP with SIP revisions, including but not limited to SIP revisions that adopt state trading programs substantively identical to and integrated with the Federal trading programs established under the FIPs for other States. New Jersey has not chosen to submit SIP revisions to replace the FIPs issued under these rules, and instead its EGUs have remained subject to the respective FIPs.

Participation by a state's EGUs in the trading programs for ozone season NO<sub>x</sub> under CSAPR, the CSAPR Update, the Revised CSAPR Update, or the GNP generally addresses the state's obligation under the NO<sub>x</sub> SIP Call for EGUs, but these trading programs no longer include an option specifically designed to allow States to address their obligations under the NO<sub>x</sub> SIP Call for non-EGUs by requiring the non-EGUs to

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<sup>7</sup> In response to judicial orders partially staying a separate EPA action (88 FR 9336, February 13, 2023) as to 12 States, the EPA has issued two interim final rules staying implementation of the Good Neighbor Plan's requirements as to the sources in those States. See 88 FR 49295 (July 31, 2023); 88 FR 67102 (September 29, 2023). On June 27, 2024, the Supreme Court of the United States granted stay applications of the Good Neighbor Plan, *Ohio et al. v. EPA*, Nos. 23A349, 23A350, 23A351, and 23A384, 603 U.S. \_\_\_\_ (2024). This does not affect the EPA's analysis of New Jersey's NO<sub>x</sub> SIP Call obligations as to non-EGUs discussed in this document.

participate in the trading programs.<sup>8</sup> The GNP required that certain types of non-EGUs<sup>9</sup> in 20 States, including New Jersey, reduce NOx emissions through emissions limitations and associated requirements beginning in the 2026 ozone season. However, it is important to note that the types of non-EGUs regulated under the NOx SIP Call and under the GNP do not fully overlap, and the forms of the requirements are different. EPA has not made any finding that compliance with the GNP's requirements by the types of non-EGUs in a state subject to that rule addresses the state's obligations with respect to the types of non-EGUs in the state affected under the NOx SIP Call.

New Jersey provided a SIP submittal on August 23, 2018, to EPA requesting removal of the State's CAIR NOx Trading Program (Subchapter 30) and the State's NOx Budget Program (Subchapter 31) from the New Jersey SIP. As previously mentioned in this section, EPA has already approved into the SIP a sunset provision of Subchapter 31. The approved sunset provision ended New Jersey's NOx Budget Program for all sources that were previously covered sources, beginning in 2009.

Since New Jersey's large non-EGUs no longer participate in a NOx ozone season trading program, the NOx 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 NOx SIP Call with respect to these types of non-EGUs in some other way.

Under 40 CFR 51.121(f)(2) of the NOx SIP Call regulations, where a state's SIP

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<sup>8</sup> While some NOx SIP Call States elected to use the specifically designed SIP revision option of this nature provided under CAIR, other States (including New Jersey) did not, and the option was removed under CSAPR. A similar specifically designed SIP revision option was provided under the CSAPR Update and the Revised CSAPR Update, but no States elected to use it, and it was removed under the GNP. Any future SIP revision seeking to address a state's NOx SIP Call obligations for non-EGUs by requiring the non-EGUs to participate in one of these trading programs will be evaluated on a case-by-case basis. See 88 FR at 36844.

<sup>9</sup> These industrial source types are: reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Concrete Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators.

contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO<sub>x</sub> mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO<sub>x</sub> SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). New Jersey triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO<sub>x</sub> Budget Trading Program after the 2009 ozone season.

On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO<sub>x</sub> SIP Call.<sup>10</sup> The revision gave States covered by the NO<sub>x</sub> SIP Call greater flexibility concerning the form of the NO<sub>x</sub> emissions monitoring requirements that the States must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make 40 CFR part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO<sub>x</sub> SIP Call units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO<sub>x</sub> SIP Call's general enforceability and monitoring requirements at § 51.121(f)(1) and (i)(1), respectively, but States are no longer required to satisfy these general NO<sub>x</sub> SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

On March 7, 2024, New Jersey submitted a letter to the EPA committing to develop a Memorandum of Agreement (MOA) between the EPA and the NJDEP that

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<sup>10</sup> See "Emissions Monitoring Provisions in State Implementation Plans Required Under the NO<sub>x</sub> SIP Call," 84 FR 8422 (March 8, 2019).

outlines how NJDEP will comply with the NOx SIP Call, specifically for the types of non-EGUs that were previously regulated by the New Jersey NOx Budget Program 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. The need for this revision arose because NJDEP conducted an analysis to determine what units would have been classified as a non-EGU under the applicability criteria of the New Jersey NOx Budget Program (N.J.A.C. 7:27-31), as in effect as of September 30, 2008. As a result of this analysis, the value of the non-EGU budget was adjusted.<sup>11</sup> 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. Both of the NJDEP commitment letters are included in the docket for this rulemaking.

In the May 31, 2024, letter, NJDEP 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 approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In their letter to the EPA, NJDEP indicated that it was their understanding that the EPA would approve the 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 NOx Budget Programs, which was submitted on August 23, 2018.

NJDEP indicated in their commitment letters that the non-EGUs no longer in the NOx trading program will not be subject to the monitoring, recordkeeping, and reporting requirements in 40 CFR part 75, and instead will rely on the emission statement reporting

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<sup>11</sup> NJDEP analysis determined that the natural gas turbine unit located at cogeneration facility, EF Kenilworth, was subject to the NOx 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).

(7:27 Subchapter-21) and emissions limits in their NO<sub>x</sub> RACT rules (7:27 Subchapter-19) as reflected in sources' air permits to continue to meet and demonstrate compliance with the non-EGU portion of the budget set under the State's former NO<sub>x</sub> 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<sub>x</sub> reporting by the state to the EPA.

Specifically, NJDEP indicated in their commitment letter to the EPA that the MOA will specify how the emission limits and monitoring, recordkeeping, and reporting requirements for sources covered by the SIP are sufficient to meet the NO<sub>x</sub> SIP Call requirements for these types of sources. The MOA would specify that NO<sub>x</sub> emissions in tons will be determined from non-EGUs during the ozone season via CEMS or stack testing already required pursuant to N.J.A.C. 7:27-19.17, "Source emission testing," and reported via NJ's Emission Statement Program (N.J.A.C. 7:27-21). The stack testing frequency, which is specified in the operating permit, shall require a new stack test at least every five years. The MOA would provide that annual and ozone-season emissions data will be collected each year, and NJDEP will report that information to EPA for each year in a format that allows for EPA to verify compliance with the NO<sub>x</sub> SIP Call. The MOA would specify that the types of non-EGUs subject to the MOA are existing, modified, and new fossil fuel-fired boilers and combustion turbines with maximum design heat input greater than 250 mmBtu/hr, except electricity generating units required to participate in the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program (40 CFR part 97, subpart GGGGG) or a successor trading program for seasonal NO<sub>x</sub> emissions. The MOA would specify that the affected units' aggregated emissions will not exceed a non-EGU emissions budget of 745 tons per ozone season (May 1 – September 30 of each

year).<sup>12</sup>

The commitment letter indicated that the MOA will be made available for public comment and will be submitted as a SIP revision to the EPA. Once the MOA is signed by both NJDEP and the EPA, and the approval of the MOA as a part of New Jersey's SIP is finalized, the MOA will become an enforceable part of the SIP, and the EPA and the NJDEP will have authority to enforce the conditions in the MOA (along with corresponding SIP-approved requirements applicable to the relevant sources). The MOA will establish the mechanism by which New Jersey will report to EPA consistent with its own obligations under the NO<sub>x</sub> SIP Call, and to ensure compliance with the budget per 40 CFR 51.121(r).

## **II. EPA's Evaluation and Proposed Action**

On August 23, 2018, NJDEP submitted a SIP revision requesting that EPA update the New Jersey SIP to reflect the removal of New Jersey's CAIR NO<sub>x</sub> Trading Program establishing the State's allowance allocations under the Federal CAIR trading programs (Subchapter 30) and New Jersey's NO<sub>x</sub> Budget Program (Subchapter 31) from the SIP. The State rule provision sunsetting the State's NO<sub>x</sub> 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<sub>x</sub> SIP Call for the types of non-EGUs that were previously regulated by the

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<sup>12</sup> The 745 tons of NO<sub>x</sub> per ozone season limit corresponds to the portion of the State's trading budget assigned to non-EGUs of the types previously regulated under the New Jersey NO<sub>x</sub> Budget Program (N.J.A.C. 7:27-31) as in effect as of September 30, 2008.

New Jersey NOx 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.

First, the EPA proposes to approve the removal of the New Jersey CAIR NOx Trading Program (Subchapter 30) from the New Jersey SIP. The State rule only 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.

Second, the EPA is proposing to conditionally approve the removal of the New Jersey NOx Budget Program (Subchapter 31) from the New Jersey SIP. Although EPA no longer administers the NOx Budget Trading Program and approved the sunset provision of the New Jersey NOx Budget program in a previous action (*see* 72 FR 55672), New Jersey has outstanding obligations under the NOx 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 NOx SIP Call for the types of non-EGUs previously regulated by the New Jersey NOx 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, the 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 the 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 a conditional approval, EPA is proposing to conditionally approve the portion of the August 23, 2018, SIP revision requesting the removal of the New Jersey NO<sub>x</sub> 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, the 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<sub>x</sub> SIP Call, specifically for the types of non-electric generating units (non-EGUs) that were previously regulated by the New Jersey NO<sub>x</sub> 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 NOx trading program established under the CAIR FIP but excluded non-EGU industrial units from its rulemaking. Under both the NOx 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 NOx 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 NOx 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 NOx 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 NOx 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 NOx 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 NOx 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 NOx 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<sub>x</sub> SIP Call and demonstrates that the removal of New Jersey's NO<sub>x</sub> 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<sub>x</sub> Budget Program. *See* 72 FR 55666. This federally-approved sunset provision ended New Jersey's NO<sub>x</sub> 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.

### **III. Environmental Justice Considerations**

New Jersey provided a supplement to the SIP submission 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 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 (EO) include the State's first EJ EO issued by Governor James E. McGreevey in 2004 (EO No. 96), an EJ EO issued by Governor Jon Corzine in 2009 (EO No. 131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016-08) and an EJ EO issued by Governor Phil Murphy in 2018 (EO 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>13</sup> tool, 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 NOx Trading Program and the State's NOx

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<sup>13</sup> 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>.

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 EO 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<sub>x</sub> 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 proposed 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.

#### **IV. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. 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 (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;
- 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.

In addition, this proposed rulemaking action pertaining to New Jersey's submissions, 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 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. 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.

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

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Lisa Garcia,**  
*Regional Administrator,*  
*Region 2.*

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