



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2025-0088; FRL-12760-01-R2]

**Air Plan Approval; New Jersey; Memorandum of Agreement to address
NO_x SIP Call Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision in the New Jersey State Implementation Plan (SIP) that includes a signed Memorandum of Agreement (MOA) developed between the EPA and the New Jersey Department of Environmental Protection (NJDEP). The MOA demonstrates how the State will maintain compliance with its nitrogen oxides (NO_x) emission control obligations for the types of large non-electricity generating units (non-EGUs) that were previously regulated under the New Jersey NO_x Budget Program. This action is being taken in accordance with the requirements of the Clean Air Act (CAA).

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 No. EPA-R02-OAR-2025-0088, at <https://www.regulations.gov>. Although listed in the index,

some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formerly 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>.

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SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY**

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I. Background

On September 3, 2024, the EPA approved removal of the New Jersey Clean Air Interstate Rule (CAIR) NOx Trading Program (N.J.A.C. 7:27-Subchapter 30) from the New Jersey SIP. *See* 89 FR 71185. 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, removing Subchapter 30 from the SIP had no consequences for any sources’ operations, nor for the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) in any area within the State.

In the September 2024 final rulemaking, the EPA also conditionally approved the removal of the New Jersey NOx Budget Program (N.J.A.C. 7:27-Subchapter 31) from the New Jersey SIP. *See* 89 FR 71185. Although the 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 continues to have obligations under the NOx SIP Call.¹

¹ In 1998, 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) to address the good neighbor provisions for the 1979 ozone NAAQS (63 FR 57356; October 27, 1998). The NOx SIP Call required Eastern States, including

Specifically, the NOx SIP Call regulation at 40 CFR 51.121(r)(2) and anti-backsliding provisions at 40 CFR 51.905(f) require New Jersey and other States to continue to meet NOx SIP Call requirements associated with the 1979 1-hour ozone national ambient air quality standards (NAAQS).² Under 40 CFR 51.121(f)(2) of the NOx SIP Call regulations, where a State's SIP contains control measures for EGUs and large non-EQU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NOx emissions from these sources.³ In addition, 40 CFR 51.121(i) of the NOx SIP Call regulations requires the SIP to contain legally enforceable procedures for affected sources to monitor emissions, maintain records, and periodically report information to enable the state to determine that those sources are in compliance with the applicable portions of the control measures. The provisions of 40 CFR 51.122 in turn require States to submit information to EPA to demonstrate compliance with the NOx SIP Call.

On March 7, 2024, and May 31, 2024, NJDEP submitted letters committing the State to submit a Memorandum of Agreement (MOA) by March 7, 2025, that would outline how NJDEP intended to comply with the NOx SIP Call for the types of non-EGUs previously regulated by the New Jersey NOx Budget Program.

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

New Jersey, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets.

² Affected non-EGUs include industrial boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr).

³ Participation by a State's EGUs in the trading programs for ozone season NOx under CSAPR, the CSAPR Update, the Revised CSAPR Update, or the Good Neighbor Plan addresses the state's obligation under the NOx SIP Call for EGUs.

develop an MOA between the EPA and NJDEP that would outline how NJDEP intended to comply with the NOx SIP Call, specifically for the types of non-EGUs that were previously regulated by the New Jersey NOx Budget Program (N.J.A.C. 7:27-Subchapter 31), and that were not covered under the subsequent CAIR Federal Implementation Plan (FIP) Trading Program.

On May 31, 2024, New Jersey submitted a revised commitment letter, replacing the earlier letter from March 7, 2024. The update reflected NJDEP's additional analysis to determine which units would have met the applicability criteria for non-EGUs under the New Jersey NOx Budget Program (N.J.A.C. 7:27-31), which was in effect as of September 30, 2008. As a result of this analysis, the value of the non-EGU budget was adjusted.⁴ 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 would submit the MOA to the EPA. In New Jersey's May 31, 2024, letter the State committed to submitting a final version of the MOA to the EPA by no later than March 7, 2025. New Jersey provided a date certain for purposes of CAA section 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 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

⁴ 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).

year from the date the EPA conditionally approved the removal of New Jersey's NOx Budget Program, i.e., no later than September 3, 2025.

The specific details of New Jersey's request to remove its NOx Budget Program and CAIR NOx Trading Program, subsequent commitment letters, and the rationale for the EPA's approval to remove those programs from the SIP are thoroughly explained in the EPA's September 3, 2024, rulemaking and are not restated in this separate proposed action. For this detailed background and the EPA's evaluation, the reader is referred to the EPA's September 2024 final rulemaking. *See* 89 FR 71185.

As outlined in New Jersey's May 2024 commitment letter, the State committed to enter a MOA between the EPA and the NJDEP that outlines how NJDEP will comply with the NOx SIP Call as to the affected non-EGUs. The MOA serves to memorialize an aggregate state-wide budget and monitoring, recordkeeping, and reporting requirements for the affected non-EGUs as well as a mechanism for the State to annually report official ozone season NOx emissions data for the affected non-EGUs to the EPA.

The May 2024 commitment letter stated that the MOA would be made available for public comment and would be submitted as a SIP revision to the EPA. As outlined in the letter, once the MOA is signed by both NJDEP and the EPA, and the approval of the MOA into the New Jersey's SIP is finalized, the MOA will become an enforceable part of the SIP, and the EPA and NJDEP will have authority to enforce the conditions in the MOA (along with their existing authority to enforce the corresponding SIP-approved requirements applicable to

the relevant sources). The MOA will serve as the enforceable mechanism for ensuring the New Jersey SIP contains enforceable limits and monitoring, recordkeeping, and reporting requirements to certify that 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 affected non-EGU units pursuant to 40 CFR 51.121(r). NJDEP's March 7, 2024, and May 31, 2024, commitment letters are included in the docket of this rulemaking.

II. What did NJDEP Submit?

On February 13, 2025, New Jersey submitted a State Implementation Plan revision for the purpose of addressing the State's NO_x SIP Call gap under 40 CFR 51.121(r)(2). In this revision, NJDEP submitted the fully executed MOA to the EPA that outlines responsibilities between the NJDEP and the EPA to ensure New Jersey's successful and effective compliance with the regulation.⁵ Prior to New Jersey's SIP submission, NJDEP transmitted a final version of the MOA for EPA Region 2 Regional Administrator signature on January 14, 2025.⁶ The MOA was signed by the EPA Region 2 Regional Administrator on January 14, 2025, and became effective upon signature of NJDEP's Commissioner on January 30, 2025. NJDEP submitted the MOA with a request for the document to be incorporated into the SIP, in accordance with the State's May 31, 2024, commitment letter.

⁵ The responsibilities and contents outlined in the final version of the MOA was developed in coordination and agreement between EPA Region 2 and NJDEP.

⁶ Prior to NJDEP submitting the SIP revision, the State certified the requirements of 40 CFR 51.102(a) and (d) regarding public hearing by offering the public an opportunity to request a public hearing by November 18, 2024. No public hearing was requested; therefore, the public hearing was cancelled. However, written comments relevant to the MOA were accepted until December 12, 2024. NJDEP confirmed in its February 13, 2025 SIP submission that no public comments were received.

Once incorporated into New Jersey’s SIP, the EPA and NJDEP will have authority to enforce the conditions in the MOA, including the mechanism by which New Jersey will report to the EPA consistent with its obligations under the NOx SIP Call and the conditions that ensure compliance with the relevant portion of New Jersey’s budget per 40 CFR 51.121(r). A copy of the MOA is included in the docket of this rulemaking.

Under the MOA, NJDEP has the primary responsibilities of ensuring that its non-EGU sources are in compliance with its SIP-approved NOx emission limits, monitoring, reporting, and recordkeeping provisions under the NOx SIP Call and as otherwise approved in New Jersey’s SIP. Specifically, NJDEP will ensure that new, modified and existing non-EGUs in the State meeting 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, adhere to emission limits, monitoring, recordkeeping, and reporting requirements as outlined in the relevant provisions of New Jersey’s SIP. New Jersey’s federally-approved NOx RACT provisions under N.J.A.C. 7:27-19, “Control and Prohibition of Air Pollution from Oxides of Nitrogen,” outline certain federally-approved NOx emission limits, monitoring, and recordkeeping requirements for new, modified, and existing non-EGUs, including industrial boilers and combustion turbines with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr).⁷ Under the MOA, New Jersey also agrees to administer and oversee testing and monitoring

⁷ On October 9, 2018, the EPA approved New Jersey’s revisions to N.J.A.C 7:27 Subchapter 16 and Subchapter 19 as satisfying RACT for the Moderate classification of the 2008 ozone NAAQS and associated RACT requirements for States located within the Ozone Transport Region. *See* 83 FR 50506.

requirements applicable to non-EGUs through the State’s RACT regulation under N.J.A.C. 7:27-19, which satisfy the monitoring requirements of the NOx SIP call under 40 CFR 51.121(f)(1) and 40 CFR 51.121(i).

Under the MOA, NJDEP will also have the responsibility of ensuring affected non-EGUs will comply with the State’s Emission Statement Program under N.J.A.C. 7:27-21, “Emission Statements.” This federally-approved program requires non-EGUs to submit emission statements annually that include actual air contaminant emissions from the facility directly or indirectly into the outdoor atmosphere during that year.⁸ Pursuant to N.J.A.C. 7:27-21.5(f)(1)(i), “Required contents of an Emission Statement,” the information within facilities emission statements shall include actual emissions of VOC and NOx in tons during the ozone season (May 1-September 30), and in pounds per day during the peak ozone season (June 1-August 31). As required under the federally-approved version of N.J.A.C. 7:27-21.5(f)(1)(ii), facilities that contain non-EGUs that are subject to New Jersey’s Emission Statement Program are also required to include the average actual rate of emissions of VOC or NOx in pounds per day of operation during the peak ozone season (June 1 – August 31). Under the MOA, NJDEP agrees to compare the actual emissions of NOx during the ozone season obtained from the affected non-EGUs’ emission statement reports with the NOx ozone season budget applicable to the affected non-EGUs and set under New Jersey’s NOx Budget Program, i.e., 745 tons of NOx per ozone season. As

⁸ The EPA most recently approved New Jersey’s Emission Statement Program, at N.J.A.C. 7:27-21, for satisfying the requirement of an emission statement program for the 2008 8-hour ozone NAAQS Serious classification on September 4, 2024. *See* 89 FR 71826.

recognized in the MOA, the reporting and recordkeeping requirements applicable to non-EGUs through the State's RACT regulation under N.J.A.C. 7:27-19 and the State's Emission Statement Program under N.J.A.C. 7:27-21 satisfy the NOx SIP Call's reporting and recordkeeping requirements of 40 CFR 51.121(i).

This in turn will facilitate New Jersey's compliance with the requirements of 40 CFR 51.122. Under the MOA, New Jersey will submit to the EPA an annual report of NOx emissions from non-EGUs. The MOA directly specifies that New Jersey's non-EGU NOx budget for compliance demonstration purposes is 745 tons of NOx per ozone season. These annual reports will be submitted after each ozone season and will be used to verify that the non-EGU budget for that ozone season was not exceeded. Specifically, under section IV. of the MOA, "Responsibilities of the Parties under this Memorandum of Agreement," NJDEP commits to emailing an annual report to the EPA Region 2 by July 1 of each year. This annual report will outline the actual ozone season and annual emissions from the affected non-EGUs, as reported through the State's emission statement program. In the event of an exceedance, New Jersey commits to submitting a revised SIP to the EPA, which will address any budget shortfall resulting from the exceedance and ensure that the State's 745 tons of NOx per ozone season budget is complied with in future years. Under the MOA, the EPA will have the responsibility of reviewing the annual reports submitted by the State and informing NJDEP as soon as practicable about any discrepancies in demonstrations and supporting information. Under the MOA, the EPA will also have the responsibility to review any request for information or assistance by the

NJDEP, in connection with the State's implementation and compliance of the NOx SIP Call.

Under the MOA, New Jersey identifies two existing facilities, Bayway Refinery (Phillips 66 Co.) and Paulsboro Refining Co., that contain non-EGU sources that meet 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. The non-EGU sources located at these existing facilities are also covered by the State's federally-approved RACT regulation, N.J.A.C. 7:27-19.1, Definitions, 19.7, Industrial/commercial/Institutional boilers and other heat exchangers, 19.15, Procedures and deadlines for demonstrating compliance, and 19.16, Adjusting combustion processes. Consistent with section III., "Program Implementation," of the MOA, NJDEP shall continue to administer and oversee its federally-approved RACT provisions to ensure compliance for the existing non-EGUs located at the Bayway Refinery and Paulsboro Refining Co. Table 1 of the MOA demonstrates that the cumulative total permitted NOx emissions during the ozone season of all affected non-EGUs at these two facilities is 349.09 tons of NOx per ozone season, which is less than half of the 745-ton limit for non-EGU sources in New Jersey.⁹ Consistent with the NOx SIP Call monitoring, reporting, and recordkeeping requirements under 40 CFR 51.121(f)(1) and 40 CFR 51.121(i), and in accordance with New Jersey's emission statement program, N.J.A.C. 7:27-21, the

⁹ Tables 3 and 4 of the MOA outline the actual emission from the Bayway Refinery and Paulsboro Refining Co. non-EGUs units for each ozone season and calendar year, respectively. Specifically, table 3 outlines the actual emission during the ozone season (tons/season) between 2019 – 2023. In 2023, the cumulative actual emission from all affected non-EGUs located at these NJ's facilities were 189.26 tons per ozone season, which is well below the 745-ton limit for non-EGU sources in New Jersey.

finalized MOA also includes table 2, which outlines the requirements for CEMS and/or Source Emission Testing for the affected non-EGU sources located at these two facilities.

III. What is the EPA's Evaluation of NJ's SIP Revision?

The EPA finds that the MOA submitted by New Jersey on February 13, 2025, effectively outlines the primary responsibilities between the NJDEP and the EPA to ensure the State's successful and effective compliance with the NO_x SIP Call, including 40 CFR 51.121(r)(2). The MOA specifies that the affected non-EGUs include existing, modified, and new fossil fuel-fired boilers and combustion turbines with a maximum design heat input greater than 250 mmBtu/hr. Consistent with the requirements of the NO_x SIP Call under 40 CFR 51.121(f) and 40 CFR 51.121(i), the MOA outlines that affected non-EGUs located in the State will continue to comply with federally-approved NO_x RACT (N.J.A.C. 7:27-19) and emission statement (N.J.A.C. 7:27-21) provisions that outline emission limits and monitoring, recordkeeping, and reporting requirements for major sources. These include requirements that the affected sources report annually to the State their ozone season NO_x emissions in tons. During the development of the MOA, the EPA determined that if New Jersey continues to administer and oversee its federally-approved RACT and emission statement provisions as to new, modified, and existing non-EGUs, the requirements of 40 CFR 51.121, including 40 CFR 51.121(r)(2), will be satisfied.

The EPA also finds that the MOA memorializes an aggregate state-wide budget for the affected non-EGU units as well as official annual ozone season

NOx reporting requirements by the State to the EPA, satisfying the State's obligations, including those at 40 CFR 51.122. The MOA specifies that the budget for affected non-EGUs' aggregated emissions will be 745 tons of NOx per ozone season (May 1 – September 30 of each year). The MOA details New Jersey's SIP-approved regulations and associated permit requirements for existing non-EGU facilities located in the State that address continuous emission monitoring and source emission testing. Specifically, the MOA commits NJDEP to transmitting an annual report to EPA Region 2 by July 1 of each year that demonstrate affected non-EGUs' compliance with a statewide budget of 745 tons of NOx per ozone season and commits to submitting a revised SIP to the EPA that will address any shortfalls if the statewide budget is ever exceeded. The MOA commits the EPA to make reasonable and prompt efforts to coordinate and review the annual reports submitted by the State. In the event of an exceedance of the budget, New Jersey commits to submit a SIP revision to the EPA that will address any budget shortfall resulting from the exceedance and ensure that the State's 745-ton ozone season budget is complied with in future years.

The EPA has evaluated the MOA and has determined that this agreement between NJDEP and EPA Region 2 addresses New Jersey's obligations under the NOx SIP Call, including under 40 CFR 51.121(r).

IV. What is the EPA's Proposed Action?

The EPA is proposing to approve a revision in the New Jersey SIP submitted by NJDEP on February 13, 2025. The SIP revision includes a MOA that outlines the responsibilities between the NJDEP and the EPA to ensure New

Jersey's successful and effective compliance with the NOx SIP Call. The MOA establishes the mechanism by which New Jersey will report to the EPA, which is consistent with the State's obligations under the NOx SIP Call. It also ensures that the ozone season NOx emissions from applicable existing and new non-EGU units will not exceed a budget of 745 tons per ozone season.

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments on this proposed rule by following the instructions listed in the **ADDRESSES** section of this document.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference NJDEP's Memorandum of Agreement with the EPA to address the NOx SIP Call as discussed in section II. of this preamble. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R02-OAR-2025-0088, at <https://www.regulations.gov>, and at the EPA Region 2 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal

regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 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 CAA.

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).

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.*)

Michael Martucci,

Regional Administrator,

Region 2.

