



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2025-0088; FRL-12760-02-R2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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: This 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-2025-0088. 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) (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>.

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007-1866, telephone number: (212) 637-3378, email address: 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:

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I. Background

On March 7, 2024, New Jersey submitted a commitment letter to the EPA to develop an MOA between the EPA and NJDEP that outlines how NJDEP will comply with their outstanding obligations under 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 which units would have been classified as 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.¹ The revised

¹ 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).

commitment 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 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 no later than one year after the date of the plan approval. On September 3, 2024, the EPA conditionally approved the removal of New Jersey's NOx Budget Program (Subchapter 31) from the New Jersey SIP. *See* 89 FR 71185. As indicated in New Jersey's May 31, 2024, 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 to removal the State's CAIR and NOx Budget Programs from the SIP.

On June 3, 2025, the EPA proposed to approve a revision in New Jersey's SIP submitted by NJDEP on February 13, 2025. *See* 90 FR 23497. Within that proposal, the EPA proposed to determine that a fully executed and signed MOA submitted by New Jersey on February 13, 2025, effectively outlined the primary responsibilities between NJDEP and EPA to ensure the State's successful and effective compliance with the NOx SIP Call under 40 CFR 51.121(r)(2). Under the MOA, NJDEP will have the primary responsibilities of ensuring that its non-EGU sources are in compliance with the State's 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, the MOA between NJDEP and EPA 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, including the State's federally-approved NO_x RACT provisions under N.J.A.C. 7:27-19, "Control and Prohibition of Air Pollution from Oxides of Nitrogen."² Through the MOA, the EPA has determined that New Jersey would satisfy its monitoring requirements of the NO_x SIP call under 40 CFR 51.121(f)(1) and 40 CFR 51.121(i) by administering and overseeing the testing and monitoring requirements applicable to the non-EGUs through the State's federally approved RACT regulation under N.J.A.C. 7:27-19.

Under the MOA, NJDEP will also have the responsibility of ensuring affected non-EGUs will comply with the State's federally-approved Emission Statement Program under N.J.A.C. 7:27-21, "Emission Statements."³ Through the MOA, NJDEP agrees to compare the actual emissions of NO_x during the ozone season obtained from the affected non-EGUs' emission statement reports with the NO_x ozone season budget applicable to the affected non-EGUs and set under New Jersey's NO_x Budget Program, *i.e.*, 745 tons of NO_x per ozone season. As 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 NO_x SIP Call's reporting and recordkeeping requirements of 40 CFR 51.121(i).

To facilitate New Jersey's compliance with the requirements of 40 CFR 51.122, the State will be required to submit to the EPA an annual report of NO_x emissions from the applicable non-EGUs. Specifically, the MOA directly specifies that New Jersey's non-EGU NO_x budget for compliance demonstrations purposes is 745 tons of NO_x per ozone season. These annual reports will be submitted after each ozone season and will be

² 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.

³ 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.

used to verify the non-EGU budget for that ozone season was not exceeded. 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 NO_x 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.

The specific details regarding New Jersey's SIP submittals, commitment letters, the contents of the MOA, and the EPA's rationale to incorporate by reference this signed and executed MOA into New Jersey's SIP are thoroughly explained in the EPA's proposed rulemaking. These details are not repeated in this final action. For this comprehensive information, readers are directed to the EPA's proposed rulemaking published on June 3, 2025 (90 FR 23497).

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

The EPA provided a 30-day review and comment period for the June 3, 2025, proposed rule. The comment period ended on July 3, 2025. We received no comments on the EPA's action. Therefore, we are finalizing our action as proposed.

III. What Action is the EPA taking?

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

IV. 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 of NJDEP's Memorandum of Agreement with the EPA to address the NO_x SIP Call described in the amendments to 40 CFR part 52 as discussed in section I. of this preamble. These documents are available in the docket of this rulemaking through <https://www.regulations.gov>. 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.⁴

V. 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;

⁴ 62 FR 27968 (May 22, 1997).

- 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).

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to 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 CAA, 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* CAA 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

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

Michael Martucci,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, EPA amends 40 CFR part 52 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 adding the entry “NJDEP’s Memorandum of Agreement with the EPA to address the NOx SIP Call” at the end of the table to 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
* * * * *				
NJDEP’s Memorandum of Agreement with the EPA to address the NOx SIP Call	Memorandum of Agreement Implementation of New Jersey’s NOx SIP Call Requirements under 40 CFR 51.121(r)(2) between NJDEP and EPA Region 2	January 30, 2025	[insert date of publication in the Federal Register], 90 FR [insert Federal Register page where the document begins]	• This MOA demonstrates how New Jersey will maintain compliance with its NO _x emission control obligations for the types of large non-EGUs that were previously regulated under the New Jersey NOx Budget Program, formally N.J.A.C. 7:27-Subchapter 31.

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