

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2013-0130, FRL-9824-1]

Approval and Promulgation of Implementation Plans; New Jersey; Infrastructure SIP for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of New Jersey's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). EPA is conditionally approving certain elements of the submittals, as well as determining that certain elements of New Jersey's submittals do not meet section 110(a)(2) requirements with existing State rules. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: *Effective Date:* This rule is effective on July 15, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2013-0130. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch,

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SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under CAA section 110(a)(1), states are required to submit plans called state implementation plans (SIPs) that provide for the implementation, maintenance and enforcement of each NAAQS and are referred to as infrastructure SIPs. 42 U.S.C. 7410(a)(1). On July 18, 1997, EPA promulgated new and revised NAAQS for 8-hour ozone (62 FR 38856) and PM_{2.5} (62 FR 38652). EPA strengthened the 24-hour PM_{2.5} NAAQS on October 17, 2006 (71 FR 61144). The 14 elements required to be addressed in infrastructure SIPs are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees, and (14) consultation/participation by affected local entities.

EPA is acting on two New Jersey SIP submittals, dated February 25, 2008 and January 15, 2010, which address the section 110 infrastructure requirements for the three NAAQS: The 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour PM_{2.5} NAAQS, and the 2006 24-hour PM_{2.5} NAAQS. This action does not address the requirements of section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS, since they were addressed in previous rulemakings. See October 1, 2007 (72 FR 55666). Additionally, this action does not address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS, which was addressed in a previous EPA rulemaking. See July 20, 2011 (76 FR 43153). Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46352, 46354 (August 3, 2012) (footnote 3); 77 FR 60307, 60308 (October 3, 2012) (footnote 1). These requirements are: (1)

Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the above infrastructure elements related to section 110(a)(2)(C) or 110(a)(2)(I).

EPA proposed action on the two SIP revisions on April 10, 2013 (78 FR 21296) and no comments were received on the proposal. The reader is referred to the April 10, 2013 proposed rulemaking for a detailed discussion of New Jersey's submittals and EPA's review and proposed actions.

In a letter dated May 2, 2013, New Jersey committed to address the following 110(a)(2) elements and sub-elements which EPA proposed to conditionally approve: E(ii) (conflict of interest provisions), E(iii) (delegations), and for the 1997 8-hour ozone element (G) (emergency powers) with a SIP submittal within one year of EPA taking final action.

II. What action is EPA taking?

EPA is approving New Jersey's submittals as fully meeting the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C) (as it relates to the enforcement of SIPs), (D)(i)(II) prong 4 (visibility), (E)(i), (F), (H), (J) (consultation), (J) (public notification), (K), (L), and (M). With the full approval of section 110(a)(2)(F), 40 CFR 52.1574 and 40 CFR 52.1575 have been satisfied and EPA is removing them from the CFR.

EPA is conditionally approving New Jersey's submittals for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS for the following 110(a)(2) elements and sub-elements: E(ii) (conflict of interest provisions), E(iii) (delegations), and for the 1997 8-hour ozone element (G) (emergency powers). New Jersey committed in a May 2, 2013 letter to correct the deficiencies and submit them to EPA within one year of this action.

New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. However, EPA does not recognize a delegated PSD program as satisfying the Infrastructure SIP requirements. Therefore, EPA is disapproving New Jersey's submittals for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS section 110(a)(2)

sub-elements: (C), prong 3 of (D)(i)(II), and (J) as they relate to the State's lack of a State adopted PSD program, as well as (D)(ii), which relates to interstate and international pollution abatement and PSD. However, these disapprovals will not trigger any sanctions or additional Federal Implementation Plan obligation since a PSD Federal Implementation Plan is already in place.

III. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- 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; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 August 13, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 5, 2013.

Judith A. Enck,
Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart FF—New Jersey

§ 52.1574 [Removed and Reserved]

- 2. Section 52.1574 is removed and reserved.

§ 52.1575 [Removed and Reserved]

- 3. Section 52.1575 is removed and reserved.
- 4. Section 52.1586 is added to read as follows:

§ 52.1586 Section 110(a)(2) infrastructure requirements.

(a) *1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS.* (1) *Approval.* In a February 25, 2008 submittal and supplemented on January 15, 2010, New Jersey certified that the State has satisfied the Clean Air Act (CAA) infrastructure requirements of section 110(a)(2) for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS. These submittals satisfy the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS requirements of CAA sections 110(a)(2)(A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E)(i), (F), (H), (J) (consultation and public notification only), (K), (L), and (M).

(2) *Disapproval.* Submittal from New Jersey dated February 25, 2008 and supplement dated January 15, 2010 to address the CAA infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS are disapproved for the following sections 110(a)(2)(C) (PSD program only), (D)(i)(II) (PSD program only), (D)(ii), and (J) (PSD program only). These requirements are being addressed by 40 CFR 52.1603 which has been delegated to New Jersey to implement.

(3) *Conditional approval.* Submittal from New Jersey dated February 25, 2008 and supplement dated January 15, 2010 to address the CAA infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS are conditionally approved for the following sections 110(a)(2)(E)(ii) (conflict of interest provisions), (E)(iii) (delegations), and for the 1997 8-hour ozone element section 110(a)(2)(G)(emergency powers). This conditional approval is contingent upon New Jersey taking actions to meet requirements of these elements within one year of conditional approval, as committed to in a letter from the State to EPA Region 2 dated May 2, 2013.

(b) [Reserved]

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