accordingly, is treated as stock under
§ 1.385–3(b)(3). Under § 1.385–3(d)(1)(i) and paragraph (c)(1)(i) of this section, DS1 Note is immediately deemed to be exchanged for stock of DS1 on Date B in Year 2. Under paragraph (c)(3) of this section, the deemed satisfaction and reissuance under § 1.1502–13(g)(3)(ii) and the deemed issuance and exchange under paragraph (c)(1)(i) of this section are respected as separate steps and treated as separate transactions. Under § 1.385–3(d)(7)(i), after DS1 Note is treated as stock held by USS1, DS1 Note is not treated as stock for purposes of determining whether DS1 is a member of the USS1 consolidated group.

(v) Example 5: Treatment of consolidated group debt instrument and consolidated group’s regarded distribution or acquisition—
(A) Facts. On Date A in Year 1, DS1 issues DS1 Note to USS1. On Date B in Year 2, USS1 distributes $100x cash to FP. On Date C in Year 3, USS1 sells all of its interest in DS1 to FS, resulting in DS1 ceasing to be a member of the USS1 consolidated group.

(B) Analysis. Under paragraph (b)(1) of this section, the USS1 consolidated group is treated as one corporation for purposes of § 1.385–3. Accordingly, when DS1 issues DS1 Note to USS1 in a distribution on Date A in Year 1, DS1 is not treated as issuing a debt instrument to a member of DS1’s expanded group in a distribution for purposes of § 1.385–3(b)(2)(i), and DS1 Note is not treated as stock under § 1.385–3(b)(2)(i). DS1’s issuance of DS1 Note to USS1 is also a disregarded distribution or acquisition, and under paragraph (d)(1)(i) of this section, continues to be a disregarded distribution or acquisition when DS1 ceases to be a member of the USS1 consolidated group.

The distribution of $100x cash by DS1 to USS1 in exchange for property immediately after DS1 Note ceases to be a member of the USS1 consolidated group.

(ii) Under paragraph (d)(1)(i) of this section, for purposes of § 1.385–3, DS1 is treated as issuing a new debt instrument to USS1 in exchange for property immediately after DS1 Note ceases to be a consolidated group debt instrument. Under paragraph (d)(4)(ii) of this section, the USS1 consolidated group (and not DS1) is treated as having distributed $100x to FP on Date B in Year 2 (a regarded distribution or acquisition) for purposes of applying § 1.385–3(b)(3) after DS1 ceases to be a member of the USS1 consolidated group. Because DS1 has not engaged in a regarded distribution or acquisition that would have been treated as funded by the reissued DS1 Note, the reissued DS1 Note is not treated as stock. 

(vi) Example 6: Treatment of departing member’s issuance of a covered debt instrument—(A) Facts. On Date A in Year 1, FS lends $100x of cash to DS1 in exchange for DS1 Note. On Date B in Year 2, USS1 distributes $30x of cash to FP. On Date C in Year 2, USS1 sells all of its DS1 stock to FP, resulting in DS1 ceasing to be a member of the USS1 consolidated group.

(B) Analysis. Under paragraph (b)(1) of this section, the USS1 consolidated group is treated as one corporation for purposes of § 1.385–3. Accordingly, on Date A in Year 1, the USS1 consolidated group is treated as issuing DS1 Note to FS, and on Date B in Year 2, the USS1 consolidated group is treated as distributing $30x of cash to FP. Because DS1 Note is issued by the USS1 consolidated group to FS within the per se period as defined in § 1.385–3(g)(19) with respect to the distribution by the USS1 consolidated group of $30x cash to FP, $30x of DS1 Note is treated as funding the distribution under § 1.385–3(b)(3)(iii)(A), and, accordingly, is treated as stock on Date C in Year 3 under § 1.385–3(b)(3) and § 1.385–3(d)(1)(ii). Under paragraph (d)(3) of this section, DS1 (and not the USS1 consolidated group) is treated as the issuer of the remaining portion of DS1 Note for purposes of applying § 1.385–3(b)(3) after DS1 ceases to be a member of the USS1 consolidated group.

(g) Applicability date. This section applies to taxable years for which the U.S. Federal income tax return is due, without extensions, after May 14, 2020. For taxable years ending on or after January 19, 2017, and for which the U.S. Federal income tax return is due, without extensions, on or before May 14, 2020, see § 1.385–4T, as contained in 26 CFR in part 1 in effect on April 1, 2019. In the case of a taxable year that ends after October 13, 2019, and on or before May 14, 2020, a taxpayer may choose to apply this section to the portion of the taxable year that occurs after the expiration of § 1.385–4T on October 13, 2019, provided that all members of the taxpayer’s expanded group apply this section in its entirety.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–08096 Filed 5–13–20; 8:45 am]
BILLING CODE 4630–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval and Air Quality Implementation Plans; New Jersey; Infrastructure SIP for Interstate Transport Requirements for the Requirements for the 2006 PM<sub>10</sub>, 2008 Lead, 2010 Nitrogen Dioxide, and the 2011 Carbon Monoxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portions of New Jersey’s State Implementation Plan (SIP) revision submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2006 particulate matter of 10 microns (µm) or less (PM<sub>10</sub>), 2008 lead, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2011 carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS).

DATES: This final rule is effective June 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2018–0681. All documents in the docket are listed on the http://www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., 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 http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action? II. What comments were received in response to the EPA’s proposed action? III. What action is the EPA taking? IV. Statutory and Executive Order Reviews
I. What is the background for this action?

Under sections 110(a)(1) and (2) of the Clean Air Act (CAA), each state is required to submit a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS or standard. CAA sections 110(a)(1) and (2) require each state to make a new SIP submission within three years after the EPA promulgates a new or revised NAAQS for approval into the existing federally approved SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS. This particular type of SIP submission is commonly referred to as a “infrastructure SIP.”

Section 110(a)(2)(D)(i)(I) of the CAA requires a state’s SIP to include adequate provisions prohibiting any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the “good neighbor” provision of the CAA.

On December 13, 2019 (84 FR 68097), the EPA published a Notice of Proposed Rulemaking (NPR) in the Federal Register for the State of New Jersey. The NPR proposed to approve elements of the State of New Jersey’s Infrastructure SIP submission, dated October 17, 2014, which were submitted to address CAA section 110(a) infrastructure requirements for the following NAAQS: 2006 PM_{10}, 2008 lead, 2010 NO_{2}, and 2011 CO. Specifically, the EPA proposed in the December 13, 2019 action to approve the portion of the submission addressing the good neighbor provision with respect to the 2006 PM_{10}, 2008 lead, 2010 NO_{2}, and 2011 CO NAAQS under CAA section 110(a)(2)(D)(i)(I).

Other detailed information relevant to this action on New Jersey’s infrastructure SIP submission, including infrastructure requirements concerning the good neighbor provision, and the rationale for EPA’s proposed action are explained in the NPR and the associated Technical Support Document (TSD) in the docket and are not restated here.

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

The EPA received three comments from two commenters in response to the December 13, 2019 NPR. The EPA has evaluated the comments, as discussed below, and has determined that New Jersey’s SIP revision addressing the 2006 PM_{10}, 2008 lead, 2010 NO_{2}, and 2011 CO NAAQS is consistent with the CAA and, therefore, the EPA is approving New Jersey’s SIP revision.

Following is a summary of the comments and the EPA’s response. The full text of the comments may also be viewed under Docket ID Number EPA–R02–OAR–2018–0681 on the http://www.regulations.gov website.

Comment: The commenter states that the EPA should consider mandating the use of renewable energy as NO_{2}, CO, CO_{2}, and other gases are byproducts of fossil fuel combustion, and New Jersey uses mostly natural gas to generate electricity. The commenter asserts that a federal mandate similar to California’s for renewable energy would better serve the EPA’s long-term goals for better air quality.

Response: This comment is outside the scope of our proposed action and is not relevant to the approval of New Jersey’s interstate transport provisions for the 2006 PM_{10}, 2008 lead, 2010 NO_{2}, and 2011 CO NAAQS under CAA section 110(a)(2)(D)(i)(I). The EPA’s review of New Jersey’s SIP revision under CAA section 110(k)(3) is limited to evaluating whether the submission meets the applicable requirements of CAA section 110(a)(2)(D)(i)(I), as detailed further in the NPR and associated TSD. The EPA is not authorized to issue any sort of federal mandate regarding renewable energy in reviewing a SIP revision under these provisions.

As the commenter has not raised any issues regarding whether New Jersey’s SIP revision meets the applicable requirements of section 110(a)(2)(D)(i)(I), the comment is outside the scope of the EPA’s proposed action.

Comment: The commenter questioned how the EPA can rely on data for the PM_{10} NAAQS which uses monitors with incomplete or no air monitoring data for PM_{10} for almost 5 years. The commenter further stated that the data in Table 3 in the TSD is at best inconclusive, and the EPA should use only monitors that have complete quality assured data to show whether monitors are violating the NAAQS. The commenter indicates that the monitors with the incomplete data are closest to the state borders, Camden, New Jersey (NJ)—1 kilometer (km); New York, New York (NY)—3 km; Bronx, NY—6 km; and Queens, NY—17 km. The commenter also states that with four out of the seven monitors closest to the New Jersey border showing incomplete data over the past five years (and a fifth monitor considering 2013–2015 data), the EPA must gather more data or show that this data is not needed before proceeding with approval.

Response: In our evaluation of New Jersey’s SIP revision, the EPA considered both recent PM_{10} design values (Table 3 of the TSD), as well as maximum annual 24-hour PM_{10} concentrations (Table 4 of the TSD) for active monitoring sites within 50 kilometers of New Jersey borders, as well as the absence of nearby nonattainment and maintenance areas for the 24-hour PM_{10} NAAQS and downward emission trends. The EPA finds this weight-of-evidence analysis is sufficient to conclude that New Jersey has met its interstate transport obligations pursuant to CAA section 110(a)(2)(D)(i)(I), and that no additional air monitoring data is necessary as suggested by the commenter.

The EPA agrees with the commenter that there are limited complete, quality assured PM_{10} design values shown in Table 3 of the TSD, PM_{10} Design Values Within 50 kilometers of New Jersey Borders. There are seven air monitoring sites located within 50 kilometers of the State’s borders. Four of the seven air monitoring locations (i.e., Camden, NJ; New York, NY; Bronx, NY; and Queens, NY) had incomplete data as shown in Table 3 for the two most recent three-year periods available.

Additionally, the New York, Bronx, and Queens air monitoring sites began operation in January 2017 and, therefore, “No data” is shown in Table 3 for the three-year monitoring periods in 2014–2016, and 2013–2015. The EPA, however, disagrees with the commenter that the design values listed are at best inconclusive. The design values shown in Table 3 show the average number of exceedances at each air monitoring site,
determined attainment of the PM\textsubscript{10} values, which are used by the EPA to make a determination of nonattainment. There is no regulation, statute, or other requirement that an area’s attainment be considered as part of the weight of evidence analysis used to support a state’s SIP revision. When determining whether an area has met its NO\textsubscript{2} or CO emissions obligations under 110(a)(2)(D)(i)(I). The EPA disagrees with the commenter that the EPA should only approve transport elements for NO\textsubscript{2} and CO if New Jersey control measures on a short-term basis, such as on a 1-hour or 8-hour basis. Additionally, because the EPA did not rely on New Jersey control methods to support approval of New Jersey’s interstate transport SIP, these comments regarding whether or how New Jersey measures control NO\textsubscript{2} or CO emissions on a short-term basis (or 1-hour and 8-hour basis or interval) are not relevant to this action. Although New Jersey included a list of relevant control measures in its October 2014 SIP submittal, the EPA did not rely on specific control measures to support the EPA’s conclusion that New Jersey’s SIP adequately addresses the good neighbor provision for the CO and NO\textsubscript{2} NAAQS. In our evaluation of the New Jersey’s interstate transport SIP, the EPA considered ambient air quality data, the lack of nearby nonattainment maintenance areas, and downward emission trends to determine that New Jersey did not contribute significantly to
potential downwind nonattainment and maintenance in another state and, therefore, New Jersey has met its obligations pursuant to 110(a)(2)(D)(i)(I) with respect to the 2010 NO\textsubscript{2} and 2011 CO NAAQS.

Because there are no indications that there are current or potential air quality problems in other states to which emissions from New Jersey would contribute, the EPA has concluded that New Jersey is not required to “prohibit” any particular amount of emissions. Rather, the EPA interprets the statute to only require a SIP to include enforceable control measures prohibiting emissions where the EPA has first concluded that emissions from the upwind state will significant contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS. See, e.g., 83 FR 65866–688; 84 FR 56077–078. Accordingly, the EPA does not agree with the commenter that New Jersey’s SIP must include measures specifically designed to control any particular level of NO\textsubscript{2} or CO emissions in order to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I).

The commenter has not raised any concerns with the adequacy of the EPA’s analysis of potential downwind air quality problems in other states, nor has the commenter offered any data or evidence suggesting that New Jersey is contributing significantly to nonattainment or interfering with maintenance in another state, or that control of short-term emissions of NO\textsubscript{2} or CO is necessary to address any alleged nonattainment or maintenance concerns in neighboring states.

The EPA finds that the ambient air quality data, the lack of nearby nonattainment and maintenance areas, and emission trends are sufficient to conclude that there are no current or potential air quality problems in other states and, therefore, New Jersey’s SIP is adequate to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the 2010 NO\textsubscript{2} and 2011 CO NAAQS.

III. What action is the EPA taking?

The EPA is approving the portions of New Jersey’s SIP revision submittal dated October 17, 2014, addressing interstate transport for the 2006 PM\textsubscript{10}, 2008 lead, 2010 NO\textsubscript{2}, and 2011 CO NAAQS as those portions meet the infrastructure SIP requirements in section 110(a)(2)(D)(i)(I) of the CAA.

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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 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 rulemaking action, pertaining to New Jersey’s section 110(a)(2) infrastructure requirements for the 2006 PM\textsubscript{10}, 2008 lead, 2010 NO\textsubscript{2}, and 2011 CO NAAQS 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).

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 July 13, 2020. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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


Peter Lopez,
Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:
1. The authority citation for part 52 continues to read as follows:

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

2. In §52.1570, the table in paragraph (e) is amended by adding the entry “NJ Infrastructure SIP for the 2006 PM10, 2008 Lead, 2010 Nitrogen Dioxide, and the 2011 Carbon Monoxide NAAQS; Interstate Transport Provisions” at the end of the table to read as follows:

<table>
<thead>
<tr>
<th>SIP element</th>
<th>Applicable geographic or nonattainment area</th>
<th>New Jersey submittal date</th>
<th>EPA approval date</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>


3. In §52.1586, paragraph (b)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

(b) * * * (1) * * * Submittal from New Jersey dated October 17, 2014 to address the CAA infrastructure requirements of section 110(a)(2) for the 2006 PM10, 2008 Lead, 2010 Nitrogen Dioxide, and the 2011 Carbon Monoxide NAAQS is approved for (D)(i)(I).

[FR Doc. 2020–08646 Filed 5–13–20; 8:45 am]