ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 96

[EPA–HQ–OAR–2003–0053; FRL–8048–1]

RIN 2060–AM95

Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, we are finalizing regulations to include Delaware and New Jersey in the Clean Air Interstate Rule (CAIR) for fine particles ($PM_{2.5}$), based on our assessment that they contribute significantly to a downwind State's nonattainment. In the CAIR, we determined that upwind States that contribute 0.2 $\mu g/m^3$ or more to a downwind $PM_{2.5}$ nonattainment area are potentially deemed to be contributing significantly to nonattainment in the downwind State. The EPA proposed to augment the analytical approach used in the CAIR by supplementing the air quality step of the contribution analysis. Based on the results of this augmented analytical approach, we proposed that Delaware and New Jersey should be covered by the CAIR for annual sulfur dioxide (SO_2) and nitrogen oxides (NO_X) requirements and are finalizing the regulation to include these States in the CAIR for $PM_{2.5}$.

DATES: This final rule is effective on June 27, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0053. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The Air Docket telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Jan King, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–5665, e-mail *king.jan@epa.gov.* For legal questions, please contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5523, e-mail at *silverman.steven@epa.gov.* For questions regarding air quality analyses, please contact Norm Possiel, U.S. EPA, Office of Air Quality Assessment Division, Mail Code C439–01, Research Triangle Park, NC 27711, telephone (919) 541–5692, e-mail at *possiel.norm@epa.gov.* For questions regarding the electric generating units (EGUs) cost analyses, emissions inventories, and budgets, and also for questions regarding the model cap and trade programs, please contact Sam Waltzer, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9175, e-mail at *waltzer.sam@epa.gov.* For questions regarding statewide emissions inventories, please contact Marc Houyoux, U.S. EPA, Office of Air Quality Assessment Division, Mail Code C339–02, Research Triangle Park, NC 27711, telephone (919) 541–3649, e-mail at *houyoux.marc@epa.gov.* For questions regarding emissions reporting requirements, please contact Bill Kuykendal, U.S. EPA, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711, telephone (919) 541–5372, e-mail at *kuykendal.bill@epa.gov.* For questions regarding analyses required by statutes and executive orders, please contact Linda Chappell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC 27711, telephone (919) 541–2864, e-mail at *chappell.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

Web Site for Rulemaking Information

The EPA has established a Web site for this rulemaking at *http://www.epa.gov/cleanairinterstaterule/* or *http://www.epa.gov/cair/* which includes the rulemaking actions and certain other related information that the public may find useful.

Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

Any final action related to the CAIR is ''nationally applicable'' within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110(a)(2)(D)(i) of the Clean Air Act (CAA), a provision which has nationwide applicability. In addition, the CAIR applies to 28 States and the District of Columbia. The CAIR is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different States subject to it. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to the CAIR. For these reasons, the Administrator also is determining that any final action regarding the CAIR is of nationwide scope and effect for purposes of section 307(d)(1). Thus, any petitions for review of final actions regarding the CAIR must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

Outline

I. Overview

By notice of proposed rulemaking dated May 12, 2005, EPA proposed to include Delaware and New Jersey in the CAIR, which was published on the same date (70 FR 25162). We are finalizing that proposal here. The final rule requires Delaware and New Jersey to adopt and submit State implementation plans (SIPs), under the requirements of CAA section 110(a)(2)(D), that would eliminate emissions of specified amounts of SO_2 and NO_X which contribute significantly to nonattainment of the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in a downwind State. Although Delaware and New Jersey are now combined to determine significant contribution, these States may independently determine which sources to subject to controls, and which control measures to adopt. The EPA's analysis indicates that emissions reductions from EGUs are highly cost effective, and EPA encourages Delaware and New Jersey to adopt controls for EGUs. To do so, they must place an enforceable limit, or cap, on EGU emissions (see section VII of the CAIR for a more detailed discussion). The EPA has calculated the amount of each State's EGU emissions cap, or budget, based on reductions that EPA has determined are highly cost effective (see section IV of this rule). Delaware and New Jersey may also allow their EGUs to participate in an EPA-administered cap and trade program as a way to reduce the cost of compliance. The cap and trade programs are described in more detail in section VIII of the preamble to the final CAIR.

A. What Are the Central Requirements of This Rule?

In today's action, we establish SIP requirements for the affected upwind States of Delaware and New Jersey under CAA section 110(a)(2)(D)(i). Section 110(a)(2)(D)(i) of the CAA requires SIPs to contain adequate provisions prohibiting air pollutant emissions from sources or activities in those States which emissions contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to a NAAQS. Based on air quality modeling analyses and cost analyses, EPA has concluded that SO_2 and NO_X emissions in Delaware and New Jersey, through the phenomenon of air pollution transport,[1] contribute significantly to downwind nonattainment of the $PM_{2.5}$ NAAQS.[2] In addition to making the findings of significant contribution to nonattainment, EPA is requiring Delaware and New Jersey to make specified amounts of SO_2 and NO_X emissions reductions to eliminate their significant contribution to downwind States. Delaware and New Jersey are required to adopt and submit SIP revisions with the necessary control measures by September 11, 2006.

B. Why Are We Taking This Action?

On May 12, 2005, we proposed to include Delaware and New Jersey in the CAIR for $PM_{2.5}$. Our assessment was that the combination of the two States does contribute significantly to $PM_{2.5}$ nonattainment in New York County, NY, and to one or more counties in eastern Pennsylvania. In that action, we proposed the following:

- Combining Delaware and New Jersey for purposes of assessing whether that combination contributes significantly to nonattainment of the $PM_{2.5}$ NAAQS by downwind receptors under section 110(a)(2)(D);
- Requiring Delaware and New Jersey, under CAA section 110(a)(2)(D), to adopt SIP requirements for addressing annual emissions of the $PM_{2.5}$ precursors NO_X and SO_2;
- Adding requirements for control of annual emissions of SO_2 and NO_X;
- Requiring that SIPs to achieve the required $PM_{2.5}$ emissions reductions be submitted as soon as practicable, but no later than 18 months after the date of signature of the CAIR, *i.e.,* September 11, 2006, the same deadline as in the CAIR; and
- Providing model cap and trade programs for EGUs in the CAIR and administering these programs.

Delaware and New Jersey are already subject to the CAIR for purposes of ozone, and must reduce ozone season emissions of NO_X starting in 2009. We proposed to add requirements for control of annual emissions of NO_X by 2009 and SO_2 by 2010 for purposes of $PM_{2.5}$. We also proposed larger reductions by 2015 for NO_X and SO_2 in order to avoid contributing significantly to $PM_{2.5}$ nonattainment, or interfere with maintenance, in other States.

We performed air quality modeling to determine the contribution from projected 2010 SO_2 and NO_X emissions in Delaware and New Jersey combined to $PM_{2.5}$ nonattainment in downwind States. The results of this modeling were provided in a Notice of Data Availability (NODA) (70 FR 37068, June 28, 2005). The results show that the largest contribution from Delaware and New Jersey was 0.23 $\mu g/m^3$ to $PM_{2.5}$ nonattainment in New York County, New York. This amount exceeds EPA's $PM_{2.5}$ significance criterion of 0.2 $\mu g/m^3$.

Based on a comment we received from the State of Delaware on the proposed rule, we have updated our 2010 emissions projections for Delaware and re-ran the model for Delaware and New Jersey. Materials relevant to this have been placed in the docket. See section III.B of this rule for further discussion of this comment and our response. The revised modeling confirms that the combination of Delaware and New Jersey make a significant contribution to $PM_{2.5}$ nonattainment in at least one downwind State thus necessitating SIP revisions under section 110(a)(2)(D) to eliminate the significant contribution. Therefore, we are finalizing the requirement for Delaware and New Jersey that they adopt SIP requirements for addressing annual emissions of the $PM_{2.5}$ precursors NO_X and SO_2.

II. Air Quality Analysis of Ozone and $PM_{2.5}$ Contributions in the CAIR [3]

For the CAIR, we performed State-by-State zero-out modeling to quantify the

[1] In today's final rule, when we use the term ''transport'' we mean to include the transport of both fine particles ($PM_{2.5}$) and their precursor emissions.

[2] In the CAIR, the 23 States along with the District of Columbia that must reduce SO_2 and NO_X emissions for the purposes of the $PM_{2.5}$ NAAQS are: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

[3] This discussion is for readers' convenience. The EPA did not reconsider or otherwise reopen any

Continued

contribution from emissions in each State to future ozone and $PM_{2.5}$ nonattainment in other States and to determine whether that contribution meets requirements of the ''contribute significantly'' test. This zero-out modeling technique provides an estimate of downwind impacts by comparing the model predictions from the 2010 base case to the predictions from a run in which all anthropogenic NO_X emissions (in the case of ozone) or all anthropogenic SO_2 and NO_X emissions (in the case of $PM_{2.5}$) are removed from specific States, one State at a time. After considering an updated analysis and public comments, we applied a threshold of 0.2 μg/m^3 for $PM_{2.5}$ for this determination.

For more detailed discussions of EPA's analytical approach, findings, and final actions in the CAIR, see 70 FR 25162, May 12, 2005.

A. Analysis of Highly Cost-Effective Controls and Timeframe for Emissions Reductions

1. Overall Criteria

In the CAIR rulemaking, we considered a variety of factors in evaluating the source categories from which highly cost-effective reductions may be available and the level of reduction assumed from that sector. These include:

- The availability of information,
- The identification of source categories emitting relatively large amounts of the relevant emissions,
- The performance and applicability of control measures,
- The cost effectiveness of control measures, and
- Engineering and financial factors that affect the availability of control measures.

We further stated that overall, ''We are striving * * * to set up a reasonable balance of regional and local controls to provide a cost-effective and equitable governmental approach to attainment with the NAAQS for fine particles and ozone.'' These criteria are unaffected by this rule.

2. Evaluation of Cost Effectiveness and Feasibility

The CAIR preamble (70 FR 25195–25229) describes EPA's determination of regionwide SO_2 and NO_X control levels. As described in section IV in the CAIR preamble, EPA determined that highly cost-effective emissions reductions may be obtained by controlling EGUs. The EPA determined the amounts of emissions reductions that must be eliminated in upwind States to help downwind States achieve attainment of the $PM_{2.5}$ and ozone NO_X NAAQS, by assuming the application of highly cost-effective control measures to EGUs and determining the emissions reductions that would result.

For the CAIR, EPA determined highly cost-effective regionwide amounts of emissions reductions based on comparison to reference lists of the cost effectiveness of other regulatory controls. We developed reference lists for both average and marginal cost effectiveness of those other controls. By comparison to the reference lists, EPA determined that the CAIR final (2015) SO_2 and NO_X regionwide control levels are highly cost effective. The EPA also developed marginal cost-effectiveness curves for SO_2 and NO_X abatement at varying levels of stringency, to corroborate its cost-effectiveness determinations.

The EPA determined the interim control levels (commencing in 2009 for NO_X and in 2010 for SO_2) based on evaluating the feasibility of installing the necessary emission control retrofits. Although the interim regionwide control levels were determined based on feasibility considerations, EPA also evaluated the cost effectiveness of the interim control levels to ensure that they were also highly cost effective.

Section IV.A describes our evaluation of highly cost-effective controls and section IV.C in the CAIR notice of final rulemaking (NFR) preamble describes EPA's feasibility analysis. Section V in the CAIR NFR preamble describes the method EPA used to apportion regionwide control levels to the affected States. A technical support document in the CAIR docket entitled ''Modeling of Control Costs, Emissions, and Control Retrofits for Cost Effectiveness and Feasibility Analyses'' describes EPA's use of the Integrated Planning Model (IPM) for its cost-effectiveness and feasibility analyses. In addition, a technical support document entitled ''Boilermaker Labor Analysis for the Final Clean Air Interstate Rule'' provides further explanation of EPA's feasibility analyses. Documentation for IPM, as well as IPM output files, are available in the CAIR docket listed in the **ADDRESSES** section of this rule.

3. CAIR Regionwide SO_2 and NO_X Emissions Reductions Requirements

The CAIR NFR requires annual SO_2 and NO_X reductions in the District of Columbia and the 23 States listed in section I.A above. If all affected States choose to implement the CAIR annual SO_2 emission reduction requirements by controlling EGUs, the regionwide annual SO_2 emissions caps that will apply in these 23 States and the District of Columbia are 3.6 million tons in 2010 and 2.5 million tons in 2015. If all affected States choose to implement the CAIR annual NO_X emission reduction requirements by controlling EGUs, the regionwide annual NO_X emissions caps that will apply for EGUs in these 23 States and the District of Columbia are 1.5 million tons in 2009 and 1.3 million tons in 2015.

The CAIR does not require annual SO_2 or NO_X emissions reductions in Delaware or New Jersey for purposes of the $PM_{2.5}$ NAAQS.[4] However, today, EPA is requiring annual SO_2 and NO_X reductions in these two States for that purpose. Annual SO_2 and NO_X budgets for Delaware and New Jersey are presented in section IV.B of this preamble. Since EPA is finalizing annual SO_2 and NO_X budgets for Delaware and New Jersey, the States may choose to implement their annual emission reduction requirements by controlling EGUs. If the States choose to control EGUs, the CAIR regionwide EGU caps will include reduction requirements for these two States. The updated annual SO_2 caps, including Delaware and New Jersey, would be 3.7 million tons in 2010 and 2.6 million tons in 2015. The updated annual NO_X caps, including Delaware and New Jersey, would be 1.5 million tons in 2009 and 1.3 million tons in 2015.

III. Inclusion of Delaware and New Jersey in the CAIR for $PM_{2.5}$

A. Why EPA Is Revising the Status of Delaware and New Jersey in the CAIR

Section 110(a)(2)(D)(i) of the CAA requires States to include in their SIPs adequate provisions prohibiting emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State. The term ''contribute significantly'' is not further defined, so in implementing this section we have had to develop an analytical approach to give the term specific meaning. The underlying logic of the analytical approach used in both the NO_X SIP Call and the CAIR is that the emission reduction efforts needed to reach attainment should be reasonably balanced between the State containing a nonattainment area and upwind States significantly contributing to the nonattainment. In this way, control efforts on one side of a border are not undermined (and even rendered futile) by out-of-State emissions, and highly

aspect of the CAIR in this rulemaking, except for the matter specifically proposed.

[4] The CAIR does require ozone season NO_X emissions reductions in Delaware and New Jersey for ozone.

cost-effective emissions reductions by out-of-State sources which contribute significantly to downwind receptors' nonattainment are achieved. We believe this approach is both efficient and equitable, so that overall costs are less and costs are more fairly distributed than if the burden of reaching attainment were entirely on the State with the nonattainment area. Congress had the same purpose when it enacted section 110(a)(2)(D). See 64 FR 29260–61, May 25, 1999 (summarizing Legislative History of section 110(a)(2)(D) predecessor provision).

We are retaining this underlying analytical approach, but treating Delaware and New Jersey as special cases and as a single geographic area for $PM_{2.5}$. Specifically, we are combining Delaware and New Jersey for purposes of assessing significant contribution to nonattainment of the $PM_{2.5}$ NAAQS by downwind receptors under section 110(a)(2)(D), and applying the finding from that combined assessment to each State.

The analytical approach used for the CAIR has two parts, the first of which is a test of whether the air quality contribution from one entire State to nonattainment in any part of another State is substantial enough to be considered significant, pending consideration of control costs. For ozone, we used a test for this first part which is based on several metrics of air quality contribution, involving absolute magnitude, relative magnitude, and frequency. For $PM_{2.5}$, we used a test with the single criterion of whether the $PM_{2.5}$ air quality contribution from an upwind State to nonattainment in a downwind State, due to total anthropogenic SO_2 and NO_X emissions in the upwind State, was 0.2 $\mu g/m^3$ or more. We believe that this specific form of the analytical approach used in the final CAIR rule has very appropriately identified a set of 23 States and the District of Columbia that should make certain reductions in annual emissions by 2009 for NO_X and by 2010 for SO_2, and larger reductions by 2015 for NO_X and SO_2, in order to avoid contributing significantly to $PM_{2.5}$ nonattainment in other States.

In the course of applying that analytical approach, we realized that a geographically small upwind State may have a maximum contribution on other States that is below the air quality contribution threshold used in the CAIR simply because of its size. Nevertheless, it may clearly contribute to $PM_{2.5}$ nonattainment in a downwind State(s). Delaware and New Jersey are examples of this geographic phenomenon. In this instance they are embedded in the much larger NE Corridor nonattainment area that covers the area from Virginia to Massachussetts. Upon further examination, EPA found that Delaware and New Jersey each has substantial emissions for its size with emission densities that are greater than some of the neighboring States included in the CAIR. Therefore, excluding Delaware or New Jersey from emission reduction requirements related to $PM_{2.5}$ would not achieve the desired balancing of local and upwind controls. Excluding either State could forgo opportunities for highly cost-effective control that would improve air quality in nearby States' $PM_{2.5}$ nonattainment areas. Ignoring the contributions of Delaware and New Jersey could result in both air quality detriments and cost inefficiencies and inequities.

The EPA considered alternative approaches to addressing this issue. We do not believe it would be appropriate to consider amending or revising the contribution significance criteria set forth in the final CAIR notice. Nevertheless, we believe that these two States, which combined represent a significant source of $PM_{2.5}$ precursor emissions, should not be considered to be below the air quality contribution threshold, in the unique circumstances presented here, solely because of their comparatively small geographic size. We have faced a similar issue with respect to small geographic entities in the NO_X SIP Call, where we combined emissions of Delaware, Maryland, and the District of Columbia, and more recently in the CAIR, where we combined emissions of the District of Columbia and Maryland.

The final CAIR's exclusion of Delaware and New Jersey for purposes of $PM_{2.5}$ drew our attention because of features unique to Delaware and New Jersey. Table III–1 and Table III–2 in the proposal to include Delaware and New Jersey in the CAIR $PM_{2.5}$ region (70 FR 25414 and 25415, respectively) present relevant facts regarding Delaware and New Jersey. We believe the following specific conditions with respect to Delaware and New Jersey justify the departure from the CAIR significance criteria because both States:

- Are contiguous;
- Have relatively small land area;
- Have high emissions densities;
- Are near major cities where $PM_{2.5}$ nonattainment affects large populations; and
- Are located between upwind States and at least one downwind area linked to an upwind State.

On balance, we believe the most appropriate way to address the factual situation presented here is to consider Delaware's and New Jersey's contributions together, as one unit of analysis. We also note that both States assented to this approach. Since Delaware and New Jersey are already subject to the CAIR for purposes of ozone, the remainder of this discussion focuses on $PM_{2.5}$ considerations.

Delaware and New Jersey are both relatively small in land area; both are smaller than any of the 23 States already subject to the CAIR for purposes of $PM_{2.5}$. Portions of both States are urbanized and industrialized, and overall both have a high emissions density, comparable to that of their neighbors.[5] Delaware has an emissions density of 76.1 tons/year per square mile, almost twice that of neighboring Pennsylvania and also higher than that of Maryland, States already linked to downwind $PM_{2.5}$ nonattainment areas. New Jersey has an emissions density of 46.6 tons/year per square mile, above that of Pennsylvania although somewhat lower than that of Maryland.

Delaware and New Jersey are near major cities where current $PM_{2.5}$ nonattainment affects large populations. Also, both are relatively near a county or counties in other States that are projected to still be in nonattainment for $PM_{2.5}$ in 2010 in the base modeling case. Delaware and New Jersey are also near large markets for electric power in other States subject to the CAIR for $PM_{2.5}$, and both are part of the PJM Interconnect electric generation. As a result, there is a potential for emissions shifting from States subject to the $PM_{2.5}$ requirements of the CAIR to States not subject to those requirements, e.g., Delaware and New Jersey.

Both Delaware and New Jersey lie between upwind States that are now subject to the CAIR for both ozone and $PM_{2.5}$ and downwind receptor $PM_{2.5}$ nonattainment areas that are linked to one or both of those upwind States. Maryland has already been determined to contribute significantly to nonattainment in both Philadelphia and New York City. Pennsylvania has already been determined to contribute significantly to nonattainment in New York City, and New York has been determined to contribute to nonattainment in Lancaster County,

[5] By emissions density we mean the total SO_2 and NO_X emissions from each State in tons per year, divided by the geographic area of the State in square miles. For comparing emissions densities for the purposes of contributions to $PM_{2.5}$ nonattainment, we have compared the emissions density expressed in terms of SO_2 plus NO_X emissions per square mile. Such a comparison is a reasonable measure of comparison that is independent of the disparity in the land area size of the two States.

Pennsylvania. New Jersey lies between Pennsylvania and New York City, and Delaware lies between part of Maryland and both Philadelphia and New York City. This means that emissions from Delaware and New Jersey are mixed with the emissions of these other upwind States and arrive together at the downwind nonattainment areas in other States. Moreover, Delaware and New Jersey are closer to these receptors.

Given these highly distinctive facts, considered in conjunction with the data concerning the downwind emissions contributions from Delaware and New Jersey, it is reasonable that Delaware and New Jersey be viewed as an entity for assessing significance of $PM_{2.5}$ nonattainment in downwind States. We did this by treating the combination of these two small States as a unit, and then evaluating the combined emissions with the 0.2 $\mu g/m^3$ threshold for $PM_{2.5}$ air quality contribution used in the CAIR. As noted, this is consistent with our approach in the NO_X SIP Call and other aspects of the CAIR in which we also aggregated certain States in assessing significant contribution. We note also that Delaware and New Jersey lie side-by-side and together form a compact geographic area. We believe this further supports combining them for purposes of this analysis. By combining these two small States, we believe the underlying cost-balancing and control program efficiency goals of our original analytical approach can be better met.

Virtually every commenter (including New Jersey and Delaware) agreed with this approach. The only negative comment termed the proposed approach ''arbitrary'' (without further analysis), and requested that EPA adhere to existing approaches for assessing significant contribution. The EPA disagrees that aggregating Delaware and New Jersey emissions is arbitrary, for the reasons just set forward. Indeed, given the facts here (especially the emission density and geographic location of the two States), it could be argued that it is arbitrary not to combine the emissions for those two States in assessing significance of contribution. Moreover, past EPA practice in both the CAIR and the NO_X SIP Call has aggregated emissions across State boundaries in similar circumstances, as explained above.

B. Results of Updated Air Quality Modeling for Delaware and New Jersey

The proposed rule for including Delaware and New Jersey in the CAIR included an analysis of the contribution of anthropogenic SO_2 and NO_X emissions in these two States to $PM_{2.5}$ nonattainment in other States. This analysis was based upon the sum of the contributions from Delaware and from New Jersey to each downwind nonattainment receptor. The contribution from each of these two States was determined based on air quality modeling of each State individually. Details on EPA's $PM_{2.5}$ contribution modeling approach can be found in the Air Quality Modeling Technical Support Document for the final CAIR.[6] In brief, the modeling approach involves ''zero-out'' model simulations in which the SO_2 and NO_X emissions from sources in a given State or multi-State area are removed from a 2010 base case scenario.[7] The predictions from this 2010 ''zero-out'' run are compared to predictions from the corresponding 2010 Base Case simulation to quantify the contributions to downwind ''modeled plus monitored'' $PM_{2.5}$ nonattainment receptors. In the proposal, we stated that we would reassess the contribution from Delaware and New Jersey combined by performing ''zero-out'' modeling in which SO_2 and NO_X emissions are removed from both States in a single model run. We conducted the combined Delaware/New Jersey zero-out modeling and the results were provided in the NODA (70 FR 37068; June 28, 2005).

The EPA did not receive any significant comment challenging the proposal to combine Delaware and New Jersey emissions to assess significance of contribution to downwind States' $PM_{2.5}$ NAAQS nonattainment. However, one commenter stated that EPA's modeling of Delaware and New Jersey failed to account for the effect on SO_2 emissions in Delaware of an enforcement action against the Motiva refinery. The commenter said that not accounting for the 27,000 tons per year reduction in SO_2 at this facility, as required by a Consent Decree, inflates Delaware's 2010 base case emissions.

In response to this comment, EPA adjusted downward the projected 2010 emissions at the Motiva refinery to reflect the required reductions and remodeled the combined contributions from Delaware and New Jersey. As a result, 2010 emissions from Delaware in the revised modeling were lower than in the NODA modeling by over 29,000 tons per year for SO_2 and over 500 tons per year for NO_X. In remodeling Delaware and New Jersey, EPA used the same $PM_{2.5}$ modeling platform as was used for the CAIR $PM_{2.5}$ contribution modeling. The contributions from Delaware and New Jersey to $PM_{2.5}$ nonattainment in other States based on the revised modeling are provided in Table III–1. These results show that the maximum downwind contribution from Delaware and New Jersey combined is 0.21 $\mu g/m^3$ which exceeds EPA's $PM_{2.5}$ contribution significance criterion of 0.20 g/m^3. Thus, the revised modeling for Delaware and New Jersey combined confirms that these States make a significant contribution to $PM_{2.5}$ nonattainment in a downwind State (namely New York County, New York, which includes New York City).

TABLE III–1.—$PM_{2.5}$ CONTRIBUTIONS ($\mu g/m^3$) FROM DELAWARE AND NEW JERSEY COMBINED TO $PM_{2.5}$ NONATTAINMENT

State	County	$PM_{2.5}$ contribution
Alabama	Jefferson Co	< 0.05
Alabama	Russell Co	< 0.05
Delaware	New Castle Co	0.15
District of Columbia	District of Columbia	0.08
Georgia	Bibb Co	< 0.05
Georgia	Clarke Co	< 0.05
Georgia	Clayton Co	< 0.05
Georgia	Cobb Co	< 0.05
Georgia	DeKalb Co	< 0.05
Georgia	Floyd Co	< 0.05
Georgia	Fulton Co	< 0.05

[6] Docket No. EPA–HQ–OAR–2003–0053–2151.

[7] 2010 base case does not include emissions reductions expected to result from implementation of the CAIR.

TABLE III–1.—$PM_{2.5}$ CONTRIBUTIONS ($\mu g/m^3$) FROM DELAWARE AND NEW JERSEY COMBINED TO $PM_{2.5}$ NONATTAINMENT—Continued

State	County	$PM_{2.5}$ contribution
Georgia	Walker Co	< 0.05
Illinois	Cook Co	< 0.05
Illinois	Madison Co	< 0.05
Illinois	St. Clair Co	< 0.05
Indiana	Clark Co	< 0.05
Indiana	Dubois Co	< 0.05
Indiana	Lake Co	< 0.05
Indiana	Marion Co	< 0.05
Indiana	Vanderburgh Co	< 0.05
Kentucky	Fayette Co	< 0.05
Kentucky	Jefferson Co	< 0.05
Maryland	Anne Arundel Co	0.11
Maryland	Baltimore City	0.10
Michigan	Wayne Co	< 0.05
New York	New York Co	0.21
North Carolina	Catawba Co	< 0.05
North Carolina	Davidson Co	< 0.05
Ohio	Butler Co	< 0.05
Ohio	Cuyahoga Co	< 0.05
Ohio	Franklin Co	< 0.05
Ohio	Hamilton Co	< 0.05
Ohio	Jefferson Co	< 0.05
Ohio	Lawrence Co	< 0.05
Ohio	Mahoning Co	< 0.05
Ohio	Montgomery Co	< 0.05
Ohio	Scioto Co	< 0.05
Ohio	Stark Co	< 0.05
Ohio	Summit Co	< 0.05
Pennsylvania	Allegheny Co	< 0.05
Pennsylvania	Beaver Co	< 0.05
Pennsylvania	Berks Co	0.13
Pennsylvania	Cambria Co	< 0.05
Pennsylvania	Dauphin Co	0.09
Pennsylvania	Delaware Co	0.15
Pennsylvania	Lancaster Co	0.15
Pennsylvania	Philadelphia Co	0.15
Pennsylvania	Washington Co	< 0.05
Pennsylvania	Westmoreland Co	< 0.05
Pennsylvania	York Co	0.12
Tennessee	Hamilton Co	< 0.05
Tennessee	Knox Co	< 0.05
West Virginia	Berkeley Co	< 0.05
West Virginia	Brooke Co	< 0.05
West Virginia	Cabell Co	< 0.05
West Virginia	Hancock Co	< 0.05
West Virginia	Kanawha Co	< 0.05
West Virginia	Marion Co	< 0.05
West Virginia	Marshall Co	< 0.05
West Virginia	Ohio Co	< 0.05
West Virginia	Wood Co	< 0.05

IV. Findings and Action

A. Findings of Significant Contribution for Delaware and New Jersey

We find that emissions of the $PM_{2.5}$ precursors SO_2 and NO_X emitted by Delaware and New Jersey contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS in New York. Accordingly, we are finalizing SIP requirements for Delaware and New Jersey under section 110(a)(1) to meet the requirements of section 110(a)(2)(D)(i), namely, to contain adequate provisions to prohibit SO_2 and NO_X emissions from sources or activities within the States from ''contribut[ing] significantly to nonattainment'' of the $PM_{2.5}$ NAAQS in downwind States.

B. SIP Approval Criteria

The CAIR added two new sections to title 40 of the Code of Federal Regulations, §§ 51.123 and 51.124 containing requirements related to NO_X and SO_2 respectively, which establish the requirement for submission of SIP revisions to comply with the CAIR and the criteria which EPA will use to review these revisions for approval or disapproval. The content of these sections is presented in section VII of the preamble to the CAIR. Delaware and New Jersey are already subject to the ozone-related provisions of these sections but not to the provisions that relate to $PM_{2.5}$. We are amending these two sections to extend the $PM_{2.5}$-related provisions to both States. The practical effect of the amendments will be to subject the States to budgets (if they choose to control large EGUs) for annual emission reduction requirements of NO_X and SO_2.

Delaware and New Jersey Statewide Annual Emissions Budgets

The NO_X and SO_2 annual and ozone season budgets for New Jersey and Delaware are shown below in Tables IV–1 and IV–2.

TABLE IV–1.—ANNUAL NO_X BUDGETS

[Tons]

Year	Delaware	New Jersey
2009	4,166	12,670
2015	3,472	10,558

TABLE IV–2.—ANNUAL SO_2 BUDGETS

[Tons]

Year	Delaware	New Jersey
2010	22,411	32,392
2015	15,687	22,674

State annual SO_2 budgets for the years 2010–2014 (Phase I) are based on a 50 percent reduction from title IV allocations for all units in the affected State. The State annual budgets for 2015 and beyond (Phase II) are based on a 65 percent reduction from title IV allowances allocated to units in the affected State for SO_2 control.

The EPA calculated State NO_X budgets through a fuel-adjusted heat-input basis, as in the CAIR. State budgets were determined by multiplying historic heat input data (summed by fuel) by different adjustment factors for the different fuels. These factors reflect the relative differences in the average NO_X emissions rates for each fuel type. The average NO_X emissions rates were derived by totaling 1999 through 2001 heat input and emissions for each fuel type (*i.e.*, coal, natural gas, and oil), in each State. The resulting adjustment factors from this calculation are 1.0 for coal, 0.4 for gas and 0.6 for oil. The factors reflect the inherently higher emissions rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions. The regional budget was then apportioned to States on a pro-rata basis, based on each State's share of total adjusted average heat input. For a more detailed discussion of how the budgets were calculated, see the proposal (70 FR 25416).

Compliance Supplement Pool (CSP) Allowances and the Statewide Budgets

The final CAIR annual NO_X cap and trade rule provides additional incentives for early annual NO_X reductions by creating a CSP for CAIR States from which they can distribute allowances for early, annual NO_X emissions reductions in the years 2007 and 2008. The CSP functions much like the NO_X SIP Call's CSP. The CSP is comprised of CAIR annual NO_X allowances of vintage year 2009.

In the final CAIR, EPA apportions a 200,000 ton CSP to all States in the CAIR region. The CSP was apportioned based on a State's share of the required emissions reductions (*i.e.*, the difference between their State baseline emissions and their projected emissions under the CAIR). States may distribute these CAIR NO_X allowances to sources based upon either: (1) A demonstration to the State of NO_X emissions reductions in surplus of any existing NO_X emission control requirements; or (2) a demonstration to the State that the facility has a ''need'' that would affect electricity grid reliability; or, another method chosen by the State. Sources that wish to receive CAIR CSP allowances can be awarded one CAIR annual NO_X allowance for every ton of NO_X emissions reductions. (Should a State receive more requests for allowances than their share of the CAIR CSP, the State would pro-rate the allowance distribution). Determination of surplus emissions must use emissions data measured using part 75 monitoring.

The CSP for CAIR States affected by the CAIR NFR has a total of 198,494 CAIR NO_X allowances in addition to the annual CAIR NO_X budgets. With Delaware and New Jersey as part of the final CAIR program, they will be allotted an additional 1,503 allowances. Table IV–3 shows the NO_X CSP for New Jersey and Delaware.

TABLE IV–3.—NO_X COMPLIANCE SUPPLEMENT POOL

[Tons]

Delaware	New Jersey
843	660

C. SIP Submittal Deadline

We are also finalizing the requirement that $PM_{2.5}$ transport SIPs be submitted, under CAA section 110(a)(1), as soon as practicable, but not later than 18 months from the date of signature of the CAIR, *i.e.*, September 11, 2006. While EPA did not receive public comment regarding the proposed Delaware and New Jersey CAIR SIP revision for $PM_{2.5}$, EPA notes that this deadline will be less than 18 months from today's final action and less than the 12-month timeline EPA had expected at the time of the publication of the Delaware and New Jersey CAIR proposal. However, we continue to believe that Delaware and New Jersey have sufficient time to develop and submit CAIR SIP revisions for the following reasons.

First, Delaware and New Jersey were included in the initial CAIR finding of significant contribution for $PM_{2.5}$ precursors, so Delaware and New Jersey have been aware that they might have to submit transport SIPs for $PM_{2.5}$ since the CAIR proposal was published on January 30, 2004. Moreover, we are adopting all of the key features of the initial CAIR proposal, including the same annual SO_2 and NO_X reductions and budgets and the same implementation mechanisms. In addition, Delaware and New Jersey have been aware of the CAIR model trading rules, which they may choose to adopt as a highly cost-effective control remedy, for the same length of time as the other CAIR States. Again, since these States have been on notice regarding these issues, we believe that it is reasonable to require Delaware and New Jersey to submit their CAIR SIP revisions for $PM_{2.5}$ on the same timeline as other CAIR $PM_{2.5}$ States.

The EPA modeling projects that, when Delaware and New Jersey are included in the CAIR SO_2 and NO_X annual trading programs, these States would achieve the required emissions reductions with limited installation of advanced emissions controls. Specifically, EPA modeling projected the installation of one flue gas desulfurization (FGD) control device in New Jersey.[8] By requiring the Delaware and New Jersey CAIR SIP revisions by September 11, 2006, sources will have 40 months to plan and install the one additional FGD device EPA predicts will be installed. This exceeds the 27 months EPA estimates it takes for the installation of a FGD device. Also, we believe sufficient boiler maker labor and other resources exist to support one additional FGD device installation by January 1, 2010.

For all these reasons, also put forth in the Delaware and New Jersey NPR, we think it reasonable that Delaware and New Jersey submit $PM_{2.5}$ transport SIPs by September 11, 2006.

D. Emissions Reporting Requirements

In order to provide emissions inventory information that will allow EPA to better monitor the implementation and effects of the

[8] The EPA modeling shows that no additional selective catalytic reduction (SCR) units would be required in the two States. Analysis is based upon comparisons of projected emissions control equipment retrofits in IPM runs with and without Delaware and New Jersey. See IPM runs (''CAIR 2004 Final DE and NJ'') in the docket for further details.

CAIR's emissions reductions, EPA incorporated into the CAIR the pre-existing emission inventory reporting requirements applicable to States affected by the CAIR. Those CAIR requirements were specific to whether a State was affected by the annual emissions reductions requirements for SO_2 and NO_X or only the ozone-season reduction requirements for NO_X. Because we are applying the annual emissions reductions requirements to Delaware and New Jersey, we are also placing these two States under the corresponding provisions of the emissions reporting requirements. The only practical effect of this change relative to existing requirements is that if either State chooses to obtain some of the required annual emissions reductions from a source which emits less than 2,500 tons/year of both SO_2 and NO_X and that source is not also made subject to the EPA-operated emissions trading programs, the State must report the annual emissions of that source to EPA annually in contrast to the triennial requirement that presently applies to such sources.

V. Expected Effects of This Action

A. Emissions

The EPA has conducted power sector analysis of the CAIR using the IPM. The IPM is a dynamic linear programming model that can be used to examine air pollution control policies for SO_2 and NO_X throughout the contiguous United States for the entire power system. Documentation for IPM can be found at *http://www.epa.gov/airmarkets/epa-ipm.*

Emissions of SO_2 and NO_X in the CAIR region would be higher under the final CAIR where Delaware and New Jersey are only included in a summer season ozone cap, similar to Connecticut and Massachusetts. Since these two States are being included as part of the annual SO_2 and NO_X caps for the CAIR, emissions in the region will be reduced by another 48,000 tons of SO_2 and 11,000 tons of NO_X from the final CAIR scenario by 2015.

The inclusion of Delaware and New Jersey in the annual CAIR requirements will result in additional reductions of SO_2 and NO_X that will help achieve attainment in downwind States. These additional reductions are shown in Table V–1.

TABLE V–1.—ANNUAL EMISSIONS FROM AFFECTED SOURCES FOR THE CAIR REGION [9]

[Thousand tons]

	2010		2015	
	SO_2	NO_X	SO_2	NO_X
Base Case	8,868	2,826	8,056	2,853
Final CAIR (DE and NJ Included for Ozone Season NO_X Only)	5,336	1,592	4,216	1,342
CAIR Modified By This Rule (DE and NJ Included for Annual SO_2 and NO_X)	5,305	1,582	4,168	1,331
Difference between CAIR Scenarios	32	10	48	11

Note: Numbers may not add due to rounding.

B. Air Quality

Section VI of the preamble to the CAIR describes the air quality modeling performed to determine the projected impacts of the CAIR on $PM_{2.5}$ and 8-hour ozone of the SO_2 and NO_X emissions reductions in the control region modeled. The modeling used to estimate the air quality impact of these reductions assumed annual SO_2 and NO_X controls for Arkansas, Delaware, and New Jersey (as had been proposed before completion of the final contribution analysis) in addition to the 23 States plus the District of Columbia. Since Arkansas, Delaware, and New Jersey are not included in the final CAIR $PM_{2.5}$ region, the modeled estimated impacts are overstated for the final CAIR which excludes all three States from the CAIR region for $PM_{2.5}$. Because Delaware and New Jersey now are subject to the $PM_{2.5}$-related emissions limits for SO_2 and NO_X, the air quality modeling for the final CAIR better approximates the net effects of the CAIR plus today's rule, but still overestimates the air quality changes somewhat due to the continued discrepancy regarding Arkansas. The Regulatory Impact Analysis for the CAIR discusses these differences in scenarios in more detail.

The EPA analyzed the impacts of the regional emissions reductions in both 2010 and 2015. These impacts are quantified by comparing air quality modeling results for the regional control scenario to the modeling results for the corresponding 2010 and 2015 base case scenarios. The 2010 and 2015 emissions reductions and air quality improvements from the regional control strategy modeled are presented in summary form in section VI of the preamble to the CAIR and in detail in the Emission Inventory Technical Support Document and the Air Quality Modeling Technical Support Document for the CAIR.

The EPA estimates, based on the air quality analysis for the CAIR, that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 80 counties that are otherwise expected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 75 counties that are otherwise expected to be in nonattainment for $PM_{2.5}$ in 2015. The EPA further estimates that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise expected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are expected to be in nonattainment for 8-hour ozone in 2015. In addition, today's rule will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that will remain nonattainment for those two NAAQS after implementation of today's rule. Because of today's rule, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional local controls. The CAIR will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas.

We have not conducted an incremental analysis of the air quality effects from the proposed extension of the annual emissions reductions requirements to New Jersey and Delaware. However, IPM modeling of EGU emissions indicates that assuming that all States join the EPA trading

[9] The CAIR region for purposes of this table includes the following States: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Caorlina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

programs, highly cost-effective emissions reductions will be distributed across the region in addition to Delaware and New Jersey themselves, and contribute to the attainment of these two States' downwind neighbors as well as other States with nonattainment areas.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In view of its important policy implications and potential effect on the economy of over $100 million, this rule and the CAIR program inclusive of this rule has been judged to be an economically ''significant regulatory action'' within the meaning of the Executive Order. As a result, today's rule was submitted to OMB for review, and EPA prepared an economic analysis of the CAIR program including this rule entitled ''Regulatory Impact Analysis of the Final Clean Air Interstate Rule'' (March 2005).

1. What Economic Analyses Were Conducted for the Rulemaking?

The analyses conducted for the CAIR program (CAIR final rule plus this New Jersey and Delaware rule) provide several important analyses of impacts on public welfare. These include an analysis of the social benefits, social costs, and net benefits of the regulatory scenario. The economic analyses also address issues involving small business impacts, unfunded mandates (including impacts for Tribal governments), environmental justice, children's health, energy impacts, and requirements of the Paperwork Reduction Act.

2. What Are the Benefits and Costs of the CAIR Program?

The benefit-cost analysis shows that substantial net economic benefits to society are likely to be achieved due to reduction in emissions resulting from the CAIR program that includes annual SO_2 and NO_X controls for New Jersey and Delaware. The results show that the CAIR program would be highly beneficial to society, with annual net benefits (benefits less costs) of approximately $71.4 or $60.4 billion in 2010 and $98.5 or $83.2 billion in 2015. These alternative net benefits estimates occur due to differing assumptions concerning the social discount rate used to estimate the annual value of the benefits of the rule with the lower estimates relating to a discount rate of 7 percent and the higher estimates a discount rate of 3 percent. All amounts are reflected in 1999 dollars. For more information, see the NFR for the CAIR published in the **Federal Register** (70 FR 25162; May 12, 2005) and the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

3. What Are the Incremental Costs to the Power Industry Associated With This New Jersey and Delaware Rule?

The costs presented here represent the total incremental cost to the electric power industry of reducing NO_X and SO_2 emissions to meet the reduction requirements set forth in the rule, assuming all States participate in a regionwide cap and trade program. These costs estimates are referred to as private costs, and these estimates differ from the cost of the program to society or social cost estimates presented for the CAIR program discussed previously. As shown in Table VI–1, EPA estimates the annual private costs of this rule to include Delaware and New Jersey in the CAIR are approximately $30 million in 2010 and $40 million in 2015. All estimates reflect 1999 dollars. Overall, the impacts of the CAIR program are modest, particularly in light of the large benefits we expect. Delaware and New Jersey are part of the PJM electricity region, which is an extremely large regional transmission organization that manages electricity movement through several Mid-Atlantic and Mid-Western States. The PJM ensures that plants are operated efficiently and power is supplied reliably and safely. Other States already in the CAIR are also part of the PJM, and EPA does not anticipate that retail electricity prices will be greatly affected by the CAIR, inclusive of this rule to include Delaware and New Jersey. Retail electricity prices are projected to increase roughly 2.0–2.6 percent with the CAIR program (inclusive of this rule) in the 2010 and 2015 timeframe, and then drop below 2.0 percent thereafter. For the MAAAC Power Region, which includes Delaware and New Jersey, retail electricity prices are projected to increase roughly 3.2 to 3.4 percent with the CAIR program (inclusive of this rule) in the 2010 and 2015 timeframe, and then drop below 1.0 percent, thereafter. The effects of the CAIR program on natural gas prices and the electric power industry generation mix are also small, with a 1.6 percent or less increase in natural gas prices projected from 2010 to 2020.

With the Delaware and New Jersey rule and the CAIR, we estimate there will be continued reliance on coal-fired generation. Coal-fired generation is projected to remain at roughly 50 percent of total electricity generated. A relatively small amount of coal-fired capacity, about 5.2 GW [10] (1.7 percent of all coal-fired capacity and 0.5 percent of all generating capacity), is projected to be uneconomic to maintain. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Units projected to be uneconomic to maintain may be ''mothballed,'' retired, or kept in service to ensure transmission reliability in certain parts of the grid.

As demand grows in the future, additional coal-fired generation is projected to be built under the CAIR program. As a result, both coal-fired generation and coal production for electricity generation are projected to increase from 2003 levels by about 15 percent in 2010 and 25 percent by 2020, and we expect a small shift towards greater coal production in Appalachia and the interior coal regions of the country with the CAIR.

For today's rule, EPA analyzed the costs and other economic inputs using the IPM described earlier and the EPA Retail Pricing Model (RPM). The additional annualized incremental costs of including Delaware and New Jersey in the CAIR program primarily occur because of the additional installation

[10] 0.5 GW of this capacity occurs as a result of the inclusion of Delaware and New Jersey in the CAIR.

and operation of a modest amount of pollution control equipment.

TABLE VI–1.—ANNUALIZED INCREMENTAL PRIVATE COSTS FOR THE CAIR REGION WITH AND WITHOUT DELAWARE AND NEW JERSEY

[Billions of 1999 dollars]

Program	Costs in 2010	Costs in 2015
Final CAIR (DE and NJ: Ozone Season NO_X Only)	$2.53	$3.85
Final CAIR Plus NJ and DE Proposal (DE and NJ: Annual SO_2 and NO_X	2.56	3.89
Difference Between CAIR Scenarios	0.03	0.04

Source: EPA 2004–2005, Integrated Planning Model. Results differ from those reported in the CAIR RIA reflecting more recent modeling results for the CAIR.

4. What Potential Benefits May Be Associated With This Rule?

Air quality modeling was not conducted for the New Jersey and Delaware rule. For this reason, an analysis of the potential benefits for the New Jersey and Delaware rule cannot be determined with any degree of specificity. However, based on the air quality modeling results for the CAIR, we can make ''ball park'' estimates of the benefits and net benefits that might occur with this rule. Including New Jersey and Delaware in the CAIR program would result in additional reductions of SO_2 and NO_X emissions. This ''ball park'' estimate approach assumes the benefits-per-ton for reductions of SO_2 and NO_X emissions for Delaware and New Jersey will equate to the average benefits-per-ton resulting from the CAIR program. Using this approach, we estimate that approximately $630 million of the total annual CAIR program benefits previously discussed are attributable to annual SO_2 and NO_X controls for New Jersey and Delaware in 2010. This estimate increases to over $1.1 billion in 2015. The full CAIR analysis including New Jersey and Delaware showed a benefit-cost ratio of as high as 39:1 in 2015. Based on the relatively low estimated private costs of including New Jersey and Delaware of $30 million in 2010 and $40 million in 2015, it is highly likely that benefits would exceed the costs of including Delaware and New Jersey in the CAIR even if benefits of controlling SO_2 and NO_X for New Jersey and Delaware are substantially lower than the average benefit estimates for the CAIR in general. It is highly unlikely that benefits are much lower than the average given the urban nature of much of New Jersey, and the proximity of New Jersey and Delaware to many heavily populated urban areas.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2184.02.

The purpose of the ICR is to estimate the anticipated monitoring, reporting, and recordkeeping burden estimates and associated costs for States, local governments, and sources that are expected to result from this final rule. This ICR describes the nature of the information collection and the estimated burden for this rule. In cases where information is already collected by a related program, the ICR takes into account only the additional burden. This situation arises in States that are also subject to requirements of the Consolidated Emissions Reporting Rule (EPA ICR number 0916.10; OMB control number 2060–0088) or for sources that are subject to the Acid Rain Program (EPA ICR 2152.01; EPA ICR number 1633.13; OMB control number 2060–0258) or NO_X SIP Call (EPA ICR number 1857.03; OMB control number 2060–0445) requirements.

The total monitoring, recordkeeping, and reporting burden to sources resulting from Delaware and New Jersey choosing to participate in a regional cap and trade program are expected to be approximately $263,000 at the time the monitors are initially used. This estimate includes the annualized cost of installing and operating appropriate SO_2 and NO_X emissions monitoring equipment to measure and report the total emissions of these pollutants from affected EGUs (serving generators greater than 25 megawatt capacity) for this rule. The burden to State and local air agencies includes any necessary SIP revisions, performing monitoring certification, and fulfilling audit responsibilities.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code, as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table VI–2 lists entities potentially impacted by this rule with applicable NAICS codes.

VI–2.—POTENTIALLY REGULATED CATEGORIES AND ENTITIES

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	2211122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal Government	[2] 221112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

According to the SBA size standards for NAICS code 221112 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See Michigan* v. *EPA*, 213 F.3d 663, 668–69 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001).

This rule would not establish requirements applicable to small entities. Instead, this rule requires New Jersey and Delaware to develop, adopt, and submit SIP revisions that would achieve the necessary SO_2 and NO_X emissions reductions, and would leave to the States the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because these States would have discretion to choose the sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not predict the effect of the rule on small entities. Although not required by the RFA, the Agency has conducted a small business analysis for the CAIR program inclusive of the New Jersey and Delaware proposal.

Overall, about 445 MW of total small entity capacity, or 1.0 percent of total small entity capacity in the CAIR region, is projected to be uneconomic to maintain under the CAIR relative to the base case. In practice, units projected to be uneconomic to maintain may be ''mothballed,'' retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

The EPA modeling identified 264 small power-generating entities within the entire CAIR region based upon the definition of small entity outlined above. The EPA excluded from this analysis 189 small entities that were not projected to have at least one unit with a generating capacity of 25 MW or great operating in the base case. Thus, we found that 75 small entities may potentially be affected by the CAIR program. Of these 75 small entities, 28 may experience compliance costs in excess of 1 percent of revenues in 2010, and 46 may in 2015, based on the Agency's assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking. Potentially affected small entities experiencing compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR. However, it is the Agency's position that because none of the affected entities currently operate in a competitive market environment, they should be able to pass the costs of complying with the CAIR on to rate-payers. Moreover, the decision to include only units greater than 25 MW in size exempts 185 small entities that would otherwise be potentially affected by the CAIR.

Two other points should be considered when evaluating the impact of the CAIR program (inclusive of the New Jersey and Delaware rule), specifically, and cap and trade programs more generally, on small entities. First, under the CAIR program, the cap and trade program is designed such that States determine how NO_X allowances are to be allocated across units. A State that wishes to mitigate the impact of the rule on small entities might choose to allocate NO_X allowances in a manner that is favorable to small entities. Finally, the use of cap and trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, Local, or Tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

The EPA prepared a written statement for the CAIR final inclusive of this rule consistent with the requirements of section 202 of the UMRA. Furthermore, as EPA stated in the rule, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under

section 203 of the UMRA a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA carried out consultations with the governmental entities affected by this rule.

For several reasons, however, EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to this rulemaking action. First, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to revise its SIP that arises out of section 110(a) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

As noted earlier, however, notwithstanding these issues, EPA prepared the statement that would be required by UMRA if its statutory provisions applied for the CAIR final rule and this rule. The EPA also consulted with governmental entities as would be required by UMRA. Consequently, it is not necessary for EPA to reach a conclusion as to the applicability of the UMRA requirements.

The EPA conducted an analysis of the economic impacts anticipated from the CAIR program inclusive of the New Jersey and Delaware proposal for government-owned entities. The modeling conducted using the IPM projects that about 340 MW of municipality-owned capacity (about 0.4 percent of all subdivision, State and municipality capacity in the CAIR region) would be uneconomic to maintain under the CAIR program, beyond what is projected in the base case. In practice, however, the units projected to be uneconomic to maintain may be ''mothballed,'' retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region.

The EPA modeling identified 265 State or municipally-owned entities, as well as subdivisions, within the entire CAIR region. The EPA excluded from the analysis government-owned entities that were not projected to have at least one unit with generating capacity of 25 MW or greater in the base case. Thus, we excluded 184 entities from the analysis. We found that 81 government entities will be potentially affected by the CAIR. Of the 81 government entities, 20 may experience compliance costs in excess of 1 percent of revenues in 2010, and 39 may in 2015, based on our assumptions of how the affected States implement control measures to meet their emissions budgets as set forth in this rulemaking.

Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR. However, as noted above, it is EPA's position that because these government entities can pass on their costs of compliance to rate-payers, they will not be significantly impacted. Furthermore, the decision to include only units greater than 25 MW in size exempts 179 government entities that would otherwise be potentially affected by the CAIR program.

The above points aside, potentially adverse impacts of the CAIR program on State and municipality-owned entities could be limited by the fact that the cap and trade program is designed such that States determine how NO_X allowances are to be allocated across units. A State that wishes to mitigate the impact of the rule on State or municipality-owned entities might choose to allocate NO_X allowances in a manner that is favorable to these entities. Finally, the use of cap and trade in general will limit impacts on entities owned by small governments relative to a less flexible command-and-control program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the relationship between the Federal government and the States, and this rule does not impact that relationship. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the CAIR from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The CAIR program (CAIR final and New Jersey and Delaware rule) does not have Tribal implications as specified in Executive Order 13175.

The CAIR program addresses transport of pollutants that are precursors for ozone and $PM_{2.5}$. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) give Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

The CAIR program does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a federally enforceable air quality management program under the CAA at this time. Furthermore, the CAIR program does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because the CAIR program does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today's rule could have

implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. As provided above, EPA has estimated that the total annual private costs for the CAIR program inclusive of the New Jersey and Delaware rule for the CAIR region as implemented by State, local, and Tribal governments is approximately $2.4 billion in 2010 and $3.6 billion in 2015 (1999 dollars). There are currently very few emissions sources in Indian country that could be affected by the CAIR program and the percentage of Tribal land that will be impacted is very small. For Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials in developing the CAIR program. The EPA encouraged Tribal input at an early stage. Also, EPA held periodic meetings with the States and the Tribes during the technical development of the CAIR program. Three meetings were held with the Crow Tribe, where the Tribe expressed concerns about potential impacts of the CAIR on their coal mine operations. The addition of Delaware and New Jersey to the CAIR program does not have any bearing upon the concerns expressed by the Tribes. In addition, EPA held three calls with Tribal environmental professionals to address concerns specific to the Tribes. These discussions have given EPA valuable information about Tribal concerns regarding the development of the CAIR program. The EPA has provided briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums. Input from Tribal representatives was taken into consideration in development of the CAIR program.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The CAIR program inclusive of the Delaware and New Jersey rule is not subject to the Executive Order, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in this rule will further improve air quality and will further improve children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' The CAIR program (the CAIR final and the New Jersey and Delaware rule) is a significant regulatory action under Executive Order 12866, and the CAIR program may have a significant adverse effect on the supply, distribution, or use of energy.

If States choose to obtain the emissions reductions required by the CAIR final and this rule by regulating EGUs, EPA projects that approximately 5.3 GW of coal-fired generation (0.5 GW due to the inclusion of Delaware and New Jersey) may be removed from operation by 2010. In practice, however, the units projected to be uneconomic to maintain may be ''mothballed,'' retired, or kept in service to ensure transmission reliability in certain parts of the grid. For the most part, these units are small and infrequently used generating units that are dispersed throughout the CAIR region. Less conservative assumptions regarding natural gas prices or electricity demand would create a greater incentive to keep these units operational. The EPA projects that the average annual electricity price will increase by less than 2.7 percent in the CAIR region (and less than 3.5 percent in the MAAC Power Region, which includes Delaware and New Jersey) for the CAIR program. The EPA does not believe that the CAIR final and this rule will have any other impacts that exceed the significance criteria.

The EPA believes that a number of features of today's rulemaking serve to reduce its impact on energy supply. First, the optional trading program provides considerable flexibility to the power sector and enables industry to comply with the emission reduction requirements in the most cost-effective manner, thus minimizing overall costs and the ultimate impact on energy supply. The ability to use banked allowances from the existing title IV SO_2 Trading Program and the NO_X SIP Call Trading Program also provide additional flexibility. Second, the CAIR program caps are set in two phases and provide adequate time for EGUs to install pollution controls. For more details concerning energy impacts, see the Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005).

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The CAIR final and this rule would require all sources that participate in the trading program under part 96 to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not

recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under section 75.66 before they are used under part 75.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[11] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998)

In accordance with Executive Order 12898, the Agency has considered whether the CAIR program inclusive of the New Jersey and Delaware rule may have disproportionate negative impacts on minority or low income populations. The Agency expects the CAIR program to lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

K. Congressional Review Act

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. The EPA will submit a report containing this rule 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 a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 27, 2006.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

Any final action related to the CAIR is ''nationally applicable'' within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110(a)(2)(D)(i) of the CAA, a provision which has nationwide applicability. In addition, the CAIR applies to 28 States and the District of Columbia. The CAIR is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different States subject to it. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to the CAIR. For these reasons, the Administrator also is determining that any final action regarding the CAIR is of nationwide scope and effect for purposes of section 307(d)(1). Thus, any petitions for review of final actions regarding the CAIR must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 96

Administrative practice and procedure, Air pollution control, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

■ Title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

■ 2. Section 51.123 is amended as follows:

■ a. By revising paragraphs (c)(1) and (c)(3).

■ b. In the table to paragraph (e)(2) by adding entries for ''Delaware'' and ''New Jersey'' in alphabetical order.

■ c. In the table to paragraph (e)(4)(ii) by adding entries for ''Delaware'' and ''New Jersey'' in alphabetical order.

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

* * * * *

(c) * * *

(1) Alabama, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia shall be subject to the requirements contained in paragraphs (e) through (cc) of this section;

* * * * *

(3) Arkansas, Connecticut, and Massachusetts shall be subject to the requirements contained in paragraphs (q) through (cc) of this section.

* * * * *

(e) * * *

(2) * * *

State	Annual EGU NO_X budget for 2009–2014 (tons)	Annual EGU NO_X budget for 2015 and thereafter (tons)
* *	* *	* *
Delaware ...	4,166	3,472
* *	* *	* *
New Jersey	12,670	10,558

[11] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

State	Annual EGU NO_X budget for 2009–2014 (tons)	Annual EGU NO_X budget for 2015 and thereafter (tons)
* * * * *		

* * * * *

(4)(i) * * *

(ii) * * *

State	Compliance supplement pool
* * * * *	
Delaware	843
* * * * *	
New Jersey	660
* * * * *	

* * * * *

§ 51.124 [Amended]

■ 3. Section 51.124 is amended by revising paragraph (c) and by adding entries for ''Delaware'' and ''New Jersey'' in the table in paragraph (e)(2) to read as follows:

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

(a) * * *

* * * * *

(c) The following States are subject to the requirements of this section: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

* * * * *

(e) * * *

(2) * * *

State	Annual EGU SO_2 budget for 2010–2014 (tons)	Annual EGU SO_2 budget for 2015 and thereafter (tons)
* * * * *		
Delaware	22,411	15,687
* * * * *		
New Jersey	32,392	22,674
* * * * *		

* * * * *

■ 4. Section 51.125 is amended by revising paragraph (a)(1) to read as follows:

§ 51.125 Emissions reporting requirements for SIP revisions relating to budgets for SO_2 and NO_X emissions.

(a) * * *

(1) Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

* * * * *

PART 96—[AMENDED]

■ 5. The authority citation for part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

Subpart EE—[Amended]

■ 6. In § 96.140 the table is amended by adding entries for ''Delaware'' and ''New Jersey'' in alphabetical order to read as follows:

§ 96.140 State trading budgets.

* * * * *

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
* * * * *		
Delaware	4,166	3,472
* * * * *		
New Jersey	12,670	10,558
* * * * *		

■ 7. In § 96.143 the table is amended, in paragraph (a), by adding entries for ''Delaware'' and ''New Jersey'' in alphabetical order to read as follows:

§ 96.143 Compliance supplement pool.

(a) * * *

State	Compliance supplement pool (tons)
* * * * *	
Delaware	843
* * * * *	
New Jersey	660
* * * * *	

* * * * *

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