

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: September 14, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart NN Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by revising the

existing entry for Carbon Monoxide Maintenance Plan (Philadelphia County) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*  
(1) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Carbon Monoxide Maintenance Plan ....	Philadelphia County.	9/8/95, 10/30/95 9/3/04	1/30/96 ..... 61 FR 2982 ..... 4/4/05 ..... 70 FR 16958 .....	52.2063(c)(105).  Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE 6. Conversion of the Carbon Monoxide Maintenance Plan to a Limited Maintenance Plan Option.
* * * * *	* * * * *	3/19/07	10/5/07 [Insert page number where the document begins].	
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[FR Doc. E7-19516 Filed 10-4-07; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 97**

[EPA-R04-OAR-2007-0423-200743(a); FRL-8475-6]

**Approval of Implementation Plans; North Carolina: Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources on August 7, 2006. These revisions incorporate provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for the State of North Carolina, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revisions, the

appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On July 3, 2007, North Carolina requested that EPA only act on a portion of the August 7, 2006, submittal as an abbreviated SIP. Consequently, EPA is approving the abbreviated SIP revisions that address the methodology to be used to allocate annual and ozone season NO<sub>x</sub> allowances to existing and new units under the CAIR FIPs and CAIR FIP opt-in provisions.

**DATES:** This direct final rule is effective December 4, 2007 without further notice, unless EPA receives adverse comment by November 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0423, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: ward.nacosta@epa.gov.
3. *Fax*: (404) 562-9019.
4. *Mail*: "EPA-R04-OAR-2007-0423", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier*: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management

Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2007-0423." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., 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 in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's proposal, please contact Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is 404-562-9140. Ms. Ward can also be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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## I. What Action Is EPA Taking?

### CAIR SIP Approval

EPA is approving revisions to the North Carolina SIP, initially submitted on August 7, 2006, and revised on July 3, 2007, that would modify the application of certain provisions of the CAIR FIP concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) North Carolina is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered Federal CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season cap-and-trade programs. The SIP revisions provide a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> annual and NO<sub>x</sub> ozone season trading programs. The CAIR FIPs provide that this methodology, if approved by EPA, will be used to allocate NO<sub>x</sub> allowances to sources in North Carolina, instead of the federal allocation methodology otherwise provided in the FIP. The SIP revisions also allow for individual units not otherwise subject to the CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs to opt into such trading programs in accordance with opt-in provisions in the CAIR FIPs. Once approved, the SIP revisions will provide for the recordation of NO<sub>x</sub> annual and ozone season allowances using the allocations determined by North Carolina, including the NO<sub>x</sub> annual new unit growth pool for 2009-2014 in North Carolina's rule minus one ton, i.e., 2,610 tons and will allow certain units to opt into, and be allocated allowances under, the opt-in provisions in the CAIR FIPs. Consistent with the flexibility provided in the FIPs, these provisions, if approved, will be also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for North Carolina. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**

publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed.

## II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particulates (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO<sub>2</sub> and annual State-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO<sub>x</sub> for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM<sub>2.5</sub> NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless, a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting

the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone-season model trading programs, as appropriate. The CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all States covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO<sub>x</sub> allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM<sub>2.5</sub> and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

### III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO<sub>2</sub> and NO<sub>x</sub> and is to be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009 and continues through 2014, while the first phase of SO<sub>2</sub> reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs, or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO<sub>2</sub> and NO<sub>x</sub> budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading

programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> ozone season trading programs.

### IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO<sub>x</sub> allowance allocation methodology).

A State submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the State submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, the CAIR FIPs provide, will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO<sub>x</sub> ozone season trading program;
2. Provide for allocation of NO<sub>x</sub> annual or ozone season allowances by the State, rather than the Administrator of the EPA or the Administrator's duly authorized representative (Administrator), and using a methodology chosen by the State;
3. Provide for allocation of NO<sub>x</sub> annual allowances from the Compliance Supplement Pool (CSP) by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by the approved SIP revisions.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO<sub>x</sub> allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the July 3, 2007, submittal from North Carolina has been submitted as an abbreviated SIP revision.

### V. Analysis of North Carolina's CAIR SIP Submittal

#### A. State Budgets for Allowance Allocations

The CAIR NO<sub>x</sub> annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO<sub>x</sub> budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO<sub>x</sub> annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO<sub>2</sub> budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO<sub>2</sub> emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO<sub>2</sub> emissions in the CAIR trading program.

The CAIR FIPs established the budgets for North Carolina as 62,183 (2009–2014) and 51,819 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 28,392 (2009–2014) and

23,660 (2015–thereafter) tons for NO<sub>x</sub> ozone season emissions, and 137,342 (2010–2014) and 96,139 (2015–thereafter) tons for SO<sub>2</sub> emissions. North Carolina's SIP revision, being approved in this action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

#### B. CAIR Cap-and-Trade Programs

The CAIR NO<sub>x</sub> annual and ozone season FIPs both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone season FIPs are similar, there are some differences. For example, the NO<sub>x</sub> annual FIP (but not the NO<sub>x</sub> ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO<sub>x</sub> annual emissions. As a further example, the NO<sub>x</sub> ozone season FIP reflects the fact that the CAIR NO<sub>x</sub> ozone season trading program replaces the NO<sub>x</sub> SIP Call trading program after the 2008 ozone season and is coordinated with the NO<sub>x</sub> SIP Call program. The NO<sub>x</sub> ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> SIP Call allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone season trading program. In addition, States have the option of continuing to meet their NO<sub>x</sub> SIP Call requirement by participating in the CAIR NO<sub>x</sub> ozone season trading program and including all their NO<sub>x</sub> SIP Call trading sources in that program.

The provisions of the CAIR SO<sub>2</sub> FIP are also similar to the provisions of the NO<sub>x</sub> annual and ozone season FIPs. However, the SO<sub>2</sub> FIP is coordinated with the ongoing Acid Rain SO<sub>2</sub> cap-and-trade program under CAA title IV. The SO<sub>2</sub> FIP uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO<sub>2</sub> cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than State implementation. The CAIR model SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs.

North Carolina is subject to the CAIR FIPs for ozone and PM<sub>2.5</sub> and the CAIR FIP trading programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season which apply to sources in North Carolina. Consistent with the flexibility it gives to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The July 3, 2007, submission of North Carolina is such an abbreviated SIP revision.

#### C. Applicability Provisions for Non-Electric Generating Units (EGUs) NO<sub>x</sub> SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone season program only, those units in the State's NO<sub>x</sub> SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's NO<sub>x</sub> SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO<sub>x</sub> ozone season trading program all units required to be in the State's NO<sub>x</sub> SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO<sub>x</sub> ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less), that the State currently requires to be in the NO<sub>x</sub> SIP Call trading program.

Consistent with the flexibility given to States in the CAIR FIP, North Carolina has not chosen, in the abbreviated SIP revision being approved in today's

action, to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all non-EGUs in the State's NO<sub>x</sub> SIP Call trading program. EPA notes that North Carolina has indicated that it intends to submit subsequently a full SIP revision that expands the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program in this manner.

#### D. NO<sub>x</sub> Allowance Allocations

Under the NO<sub>x</sub> allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO<sub>x</sub> annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different NO<sub>x</sub> allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO<sub>x</sub> allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to States in the CAIR FIPs, North Carolina has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. North Carolina has chosen to distribute NO<sub>x</sub> annual allowances by submitting the table adopted in 15A NCAC 02D .2403(a), which establishes the North Carolina CAIR NO<sub>x</sub> annual allocations for existing units. In addition, North Carolina has chosen to use the same methodology as in the CAIR FIP to allocate allowances for 2,610 and 1,131 tons of NO<sub>x</sub> to new unit growth for 2009–2014 and for 2015 and thereafter, respectively. Under 40 CFR 51.123(p)(1)(ii)(C), the State permitting

authority must submit CAIR NO<sub>x</sub> annual allowance allocations for new units determined under an abbreviated SIP revision by October 31 of each year for which the allowances are allocated. North Carolina's rule does not address the question of when new unit allocations will be submitted to the Administrator and does not adopt either the timing set forth in 40 CFR 51.123(p)(1)(ii)(C), or any alternative timing, for the allocation submissions. However, in a letter dated September 18, 2007, North Carolina stated that its submissions of new unit allocations to the Administrator will meet the timing requirement in 40 CFR 51.123(p)(1)(ii)(C). In light of North Carolina's express intent to meet the timing requirements for submissions of new unit allocations, EPA is interpreting North Carolina's rule to require that new unit allocations be submitted to the Administrator by October 31 of each year for which new unit allocations are made.

Consistent with the flexibility given to States in the CAIR FIPs, North Carolina has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone season FIP concerning allowance allocations with their own methodology. North Carolina has chosen to distribute NO<sub>x</sub> ozone season allowances by submitting the table adopted in 15A NCAC 02D .2405(a), which establishes the North Carolina CAIR NO<sub>x</sub> ozone season allocations for existing units. In addition, North Carolina has chosen to use the same methodology as in the CAIR FIP to allocate allowances for 1,206 and 531 tons of NO<sub>x</sub> to new units for 2009–2014 and for 2015 and thereafter, respectively. Under 40 CFR 51.123(ee)(2)(ii)(D), the State permitting authority must submit CAIR NO<sub>x</sub> ozone season allowance allocations for new units determined under an abbreviated SIP revision by July 31 of each year for which the allowances are allocated. North Carolina's rule does not address the question of when new unit allocations will be submitted to the Administrator and does not adopt either the timing set forth in 40 CFR 51.123(ee)(2)(ii)(D), or any alternative timing, for the allocation submissions. However, in a letter dated September 18, 2007, North Carolina stated that its submissions of new unit allocations to the Administrator will meet the timing requirement in 40 CFR 51.123(ee)(2)(ii)(D). In light of North Carolina's express intent to meet the timing requirements for submissions of new unit allocations, EPA is interpreting North Carolina's rule to require that new unit allocations be

submitted to the Administrator by July 31 of each year for which new unit allocations are made.

#### *E. Allocation of NO<sub>x</sub> Allowances From the Compliance Supplement Pool (CSP)*

The CSP provides an incentive for early reductions in NO<sub>x</sub> annual emissions. The CSP consists of 200,000 CAIR NO<sub>x</sub> annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO<sub>x</sub> reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO<sub>x</sub> annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the FIP, North Carolina has not chosen to modify the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of allowances from the CSP, since the State does not have any allowances available to allocate under the CSP provisions.

#### *F. Individual Opt-In Units*

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second

methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the State without the ability for units to opt into the program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> annual trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart II of the CAIR NO<sub>x</sub> annual trading program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> ozone season trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart III of the CAIR NO<sub>x</sub> ozone season trading program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow certain non-EGUs to opt into the CAIR SO<sub>2</sub> trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart III of the CAIR SO<sub>2</sub> trading program.

## **VI. Final Action**

EPA is approving North Carolina's abbreviated CAIR SIP revisions submitted on July 3, 2007. North Carolina is covered by the CAIR FIPs, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Under these abbreviated SIP revisions and consistent with the flexibility given to States in the FIPs, North Carolina adopts provisions for allocating allowances under the CAIR FIP NO<sub>x</sub> annual and ozone season trading programs, including new unit provisions. EPA is approving North

Carolina's CAIR NO<sub>x</sub> annual and ozone season allocation provisions (interpreted as discussed above) for units subject to the CAIR trading programs under the current CAIR FIP NO<sub>x</sub> annual and ozone season applicability provisions. In addition, North Carolina adopts in the abbreviated SIP revision provisions that allow for individual non-EGUs to opt into the CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season cap-and-trade programs. EPA is approving North Carolina's allowing for opt-in units and therefore the application of the opt-in provisions in these CAIR FIP trading programs to units in North Carolina.

As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in North Carolina. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions, and 40 CFR 51.124(r), with regard to SO<sub>2</sub> emissions. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 4, 2007 without further notice unless the Agency receives adverse comments by November 5, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 4, 2007 and no further action will be taken on the proposed rule.

## VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

#### 40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2007.
J.I. Palmer, Jr.,
Regional Administrator, Region 4.

40 CFR parts 52 and 97 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart (II)—(North Carolina)

2. In § 52.1770(c) Table 1 is amended under Subchapter 2D by adding, in

numerical order, a new chapter heading for "Section .2400 Clean Air Interstate Rules" and entries for "Section .2403(a)", "Section .2405(a)", and "Section .2412" to read as follows:

§ 52.1770 Identification of plan.

\* \* \* \* \*
(c) \* \* \*

TABLE -1.—EPA-APPROVED NORTH CAROLINA REGULATIONS

Table with 5 columns: State citation, Title/subject, State effective date, EPA approval date, Explanation. Includes Section .2400 Clean Air Interstate Rules with entries for Nitrogen Oxide Emissions and New Unit Growth.

PART 97—[AMENDED]

3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et seq.

4. Appendix A to subpart EE is amended by adding in alphabetical order the entry "North Carolina" under paragraph 1. to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. \* \* \*
North Carolina
\* \* \* \* \*

5. Appendix A to subpart II of part 97 is amended by adding in alphabetical order the entry "North Carolina" under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NOx Opt-In Units

1. \* \* \*
North Carolina
2. \* \* \*
North Carolina
\* \* \* \* \*

6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry "North Carolina" under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO2 Opt-In Units

1. \* \* \*
North Carolina
2. \* \* \*
North Carolina
\* \* \* \* \*

7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry "North Carolina" under the introductory text to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

\* \* \* \* \*
North Carolina
\* \* \* \* \*

8. Appendix A to subpart IIII of part 97 is amended by adding in alphabetical order the entry "North Carolina" under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NOx Ozone Season Opt-in Units

1. \* \* \*
North Carolina
2. \* \* \*
North Carolina
\* \* \* \* \*

[FR Doc. E7-19317 Filed 10-4-07; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.