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[FR Doc. E9-22883 Filed 9-24-09; 8:45 am]

BILLING CODE 4191-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0368; FRL-8950-9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Ohio State Implementation Plan (SIP) that would address the requirements of EPA's Clean Air Interstate Rule (CAIR). EPA previously approved an "abbreviated SIP" for Ohio, primarily consisting of rules governing allocation of allowances to electric generating units (EGUs) for use in the trading programs established pursuant to CAIR and providing for voluntary opt-in to these programs. The abbreviated SIP was implemented in conjunction with a Federal Implementation Plan (FIP) that specified requirements for emissions monitoring, permit provisions, and other elements of the CAIR programs. EPA is now approving the addition of non-EGUs to the CAIR Nitrogen Oxides (NO_x) Ozone Season Trading Program, and EPA is issuing a "full SIP" approval under which the various CAIR implementation provisions would be governed by State rules rather than FIP rules. This rulemaking addresses rules Ohio submitted on July 15, 2009, and August 13, 2009. This action also causes the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxides (SO₂), NO_x annual, and NO_x ozone season emissions by Ohio sources to be automatically withdrawn.

DATES: This direct final rule will be effective November 24, 2009, unless EPA receives adverse comments by October 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R05-OAR-2009-0368 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail*: mooney.john@epa.gov.

3. *Fax*: (312) 692-2551.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2009-0368. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail.

The <http://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 <http://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.

Docket: All documents in the electronic docket are listed in the <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 <http://www.regulations.gov> or in hard copy during normal business hours at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067, before visiting the Region 5 office. **FOR FURTHER INFORMATION CONTACT:** John Summerhays, (312) 886-6067, or by e-mail at summerhays.john@epa.gov.

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I. What Action Is EPA Taking?

EPA is approving a "full SIP" revision addressing CAIR in Ohio. In this action, EPA is approving the entire set of rules in Ohio Administrative Code (OAC) Chapter 3745-109, entitled "Clean Air Interstate Rule." Ohio submitted these rules in two parts: A submittal dated July 15, 2009, provided rules that were to become effective July 16, 2009, and a submittal dated August 13, 2009, provided rules that had become effective on September 27, 2007.

On February 1, 2008, at 73 FR 6034, EPA approved an "abbreviated SIP," primarily consisting of rules governing allocation of NO_x allowances to EGUs for use in the trading programs established pursuant to CAIR and rules

allowing sources to opt into the CAIR programs. The abbreviated SIP was implemented in conjunction with a FIP that specified requirements for emissions monitoring, permit provisions, and other elements of the CAIR programs. EPA is now approving the addition of non-EGUs to the CAIR NO_x Ozone Season Trading Program, and EPA is issuing "full SIP" approval under which the various CAIR implementation provisions will be governed by State rules rather than FIP rules. EPA finds that Ohio's rules meet the applicable CAIR requirements by requiring certain EGUs to participate in the EPA-administered CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions, and by requiring certain non-EGUs to participate in the program for NO_x ozone season emissions.

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

EPA published CAIR on May 12, 2005 (70 FR 25162). In adopting this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles (PM_{2.5}) 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 SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_x for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements 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 with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective on 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_{2.5} 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 Clean Air Act 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. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR trading programs for SO₂, NO_x annual, and NO_x ozone emissions, as appropriate. These CAIR FIP trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007, at 72 FR 59190, a State's CAIR FIPs are automatically withdrawn when EPA approves a SIP revision, in its entirety and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIPs are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (*e.g.*, the methodology for allocating NO_x allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

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

On October 19, 2007, at 72 FR 59190, EPA amended CAIR and the CAIR FIPs to clarify the definition of "cogeneration unit" and thus the applicability of the CAIR trading program to cogeneration units. Ohio has amended its rules to incorporate a clarified definition, a change that EPA is approving in this action.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in Ohio.

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

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ 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 SO₂ and NO_x 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_x SIP Call trading programs in the CAIR NO_x Ozone Season Trading Program.

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. As EPA anticipated, most States have chosen 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_x allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x Ozone Season Trading Program;
2. Provide for State allocation of NO_x annual or ozone season allowances using a methodology chosen by the State;
3. Provide for State allocation of NO_x annual allowances from the compliance supplement pool (CSP) 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 SO₂, NO_x Annual, or NO_x Ozone Season Trading Programs under the opt-in provisions in the model rules. An approved CAIR full SIP revision addressing EGUs' SO₂, NO_x annual, or NO_x ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. History of Ohio CAIR Submittals

Ohio's initial response to CAIR was a submittal, dated April 17, 2007, providing draft rules. These rules were intended to constitute a full SIP submittal, addressing the requirements under CAIR without reliance on the CAIR FIPs. However, in its next submittal, dated September 26, 2007, Ohio acknowledged ongoing discussions with EPA regarding selected portions of the rules. In this submittal, Ohio requested abbreviated SIP approval, in order to expedite Ohio's participation in the CAIR trading programs, but Ohio also reiterated its desire for full SIP approval once it had completed rule revisions addressing EPA's concerns.

Rulemaking on a full SIP submittal involves a broader range of issues than rulemaking on an abbreviated SIP submittal. EPA wished to expedite action on Ohio's NO_x allowance allocation and its rules allowing sources voluntarily to opt into the trading programs. Therefore, as requested by Ohio, EPA took action on the abbreviated SIP portion of Ohio's submittal and did not act on other Ohio CAIR rules. EPA proposed direct final approval of these abbreviated SIP portions of Ohio's rules on October 16, 2007 (72 FR 58546), withdrew that action on December 5, 2007 (72 FR 68515), following receipt of a comment, and took final action on these rules on February 1, 2008 (73 FR 6034).

Ohio and EPA continued to discuss Ohio's rules, leading Ohio to propose various rule revisions. These revisions amended Ohio's applicability provisions consistent with EPA's revised definition of cogeneration units, to help make Ohio's applicability provisions for non-EGUs consistent with EPA guidance. Additional revisions corrected rule references. However, before Ohio could adopt and submit these rule revisions, the Court of Appeals for the District of Columbia Circuit issued its opinion concluding that CAIR should be vacated. This opinion led Ohio to suspend rulemaking on its CAIR-related rules. Then, following the Court's issuance, on December 23, 2008, of its order remanding but not vacating CAIR, Ohio resumed work on these rule revisions. Ohio proposed revised rules, which it submitted to EPA on May 11, 2009. Ohio held a public hearing on its proposed rules on June 2, 2009, and submitted final revised rules on July 15, 2009.

Ohio's CAIR rules, in Ohio Administrative Code (OAC) Chapter 3745-109, include rules from OAC

3745-109-01 to 3745-109-21. Thirteen of these rules reflect revisions that became effective on July 16, 2009; Ohio submitted these rules on July 15, 2009. The other eight rules, although effective on September 27, 2007, were not included in either Ohio's September 26, 2007, submittal or its July 15, 2009, submittal; these rules were submitted on August 13, 2009. Ohio's August 13, 2009, submittal also reaffirms Ohio's request for full SIP approval.

VI. Analysis of Ohio's CAIR SIP Submittal

A. Elements of Ohio's Submittal

The rulemaking that EPA completed on February 1, 2008 (73 FR 6034), granting abbreviated SIP approval, addressed only six of Ohio's CAIR rules. EPA is today acting on Ohio's full set of rules, constituting a full SIP that will supersede the FIPs that are currently in effect in Ohio. Although some rules approved on February 1, 2008, have not changed, and thus arguably need not be approved again, EPA is acting again on these rules in conjunction with the remainder of Ohio's CAIR rules for purposes of clarity and administrative convenience. The following list identifies the rules that EPA is addressing today and the applicable submittal date:

- 3745-109-01 CAIR NO_x annual, CAIR SO₂ and CAIR NO_x ozone season trading programs definitions and general provisions—submitted July 15, 2009.
- 3745-109-02 CAIR designated representative for CAIR NO_x sources—submitted August 13, 2009.
- 3745-109-03 Permits—submitted August 13, 2009.
- 3745-109-04 CAIR NO_x allowance allocations—submitted July 15, 2009.
- 3745-109-05 CAIR NO_x allowance tracking system—submitted August 13, 2009.
- 3745-109-06 CAIR NO_x allowance transfers—submitted August 13, 2009.
- 3745-109-07 Monitoring and Reporting—submitted July 15, 2009.
- 3745-109-08 CAIR NO_x opt-in units—submitted July 15, 2009.
- 3745-109-09 CAIR designated representative for CAIR SO₂ sources—submitted August 13, 2009.
- 3745-109-10 Permits—submitted August 13, 2009.
- 3745-109-11 CAIR SO₂ allowance tracking system—submitted July 15, 2009.
- 3745-109-12 CAIR SO₂ allowance transfers—submitted July 15, 2009.

- 3745-109-13 Monitoring and reporting—submitted July 15, 2009.
- 3745-109-14 CAIR SO₂ opt-in units—submitted July 15, 2009.
- 3745-109-15 CAIR designated representative for CAIR NO_x ozone season sources—submitted August 13, 2009.
- 3745-109-16 Permits—submitted August 13, 2009.
- 3745-109-17 CAIR NO_x ozone season allowance allocations—submitted July 15, 2009.
- 3745-109-18 CAIR NO_x ozone season allowance tracking system—submitted July 15, 2009.
- 3745-109-19 CAIR NO_x ozone season allowance transfers—submitted July 15, 2009.
- 3745-109-20 Monitoring and reporting—submitted July 15, 2009.
- 3745-109-21 CAIR NO_x ozone season opt-in units—submitted July 15, 2009.

In order to provide an orderly transition from the NO_x Budget Trading Program to the CAIR NO_x Ozone Season Trading Program, EPA requires States to adopt rules clarifying that the rules of the NO_x Budget Trading Program (adopted to address the NO_x SIP Call) are no longer in effect. However, approval of such transition provisions is not a prerequisite for approval of Ohio's CAIR rules. Ohio is taking separate action to propose rule revisions to clarify that its rules for the NO_x Budget Trading Program are no longer in effect, for as long as EPA is instead implementing the CAIR NO_x Ozone Season Trading Program. EPA is not acting today on such rules and will conduct separate rulemaking on Ohio's transition rules at such time as Ohio adopts and submits the rules.

B. State Budgets for Allowance Allocations

The CAIR NO_x 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 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_x annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO₂ budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the Clean Air Act. Under CAIR, each allowance allocated in the Acid Rain Program for

the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO₂ 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 SO₂ emissions in the CAIR trading program.

In today's action, EPA is approving Ohio's SIP revision that adopts the budgets established for the State in CAIR. These annual emission budgets are: For NO_x annual emissions, 108,667 tons from 2009 through 2014, and 90,556 tons in 2015 and thereafter; for NO_x ozone season emissions, 45,664 tons from 2009 through 2014, and 39,945 tons in 2015 and thereafter; and, for SO₂ annual emissions, 333,520 tons from 2009 through 2014, and 233,464 tons in 2015 and thereafter. Additionally, the CAIR NO_x ozone season budget will be increased annually by 4,030 tons to account for NO_x SIP Call trading sources that are not EGUs under CAIR but are included in the CAIR NO_x Ozone Season Trading Program. Ohio's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

In *North Carolina*, 531 F.3d at 916–21, the Court determined, among other things, that the State SO₂ and NO_x budgets established in CAIR were arbitrary and capricious.¹ However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to “temporarily preserve the environmental values covered by CAIR” pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina*, 550 F.3d at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina v. EPA*, Case No. 05–1224, DC Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO₂ and

NO_x budgets for the CAIR trading programs) in order to “temporarily preserve” the environmental benefits achievable under the CAIR trading programs.

C. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone season model trading rules both largely mirror the structure of the NO_x SIP Call model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO_x annual and ozone season model rules are similar, there are some differences. For example, the NO_x annual model rule (but not the NO_x ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season model rule reflects the fact that the CAIR NO_x Ozone Season Trading Program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone season trading program. In addition, States have the option of continuing to meet their NO_x SIP Call requirements by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

The provisions of the CAIR SO₂ model rule are also similar to the provisions of the NO_x annual and ozone season model rules. However, since Clean Air Act title IV establishes an ongoing Acid Rain cap-and-trade program for SO₂ and not for NO_x, the model rule for SO₂ must additionally be coordinated with the Acid Rain program. The SO₂ model rule 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 SO₂ 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 SO₂ 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

¹ The Court also determined that the CAIR trading programs were unlawful (*id.* at 921–23). For the same reasons that EPA is approving the provisions of Ohio's SIP revision that use the SO₂ and NO_x budgets set in CAIR, EPA is also approving as discussed below, Ohio's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

changes made to account for Federal rather than State implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

In the SIP revision EPA is approving, Ohio chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Ohio has adopted State rules for a "full SIP" revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO₂, NO_x annual, and NO_x ozone season emissions. Finally, Ohio's rules provide that non-EGUs that were required to participate in the NO_x Budget Trading Program must participate in the CAIR NO_x Ozone Season Trading Program.

D. Applicability Provisions

In general, the CAIR model trading rules 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 megawatts producing electricity for sale.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State's NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to add the applicability provisions in the State's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_x ozone season trading program all units required to be in the State's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x 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 megawatts or less) that the State currently requires to be in the NO_x SIP Call trading program. Ohio has chosen to expand the applicability provisions of the CAIR NO_x Ozone Season Trading Program to include all non-EGUs that were subject to the State's NO_x SIP Call trading program.

E. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x 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.

States may establish in their SIP submissions a different NO_x 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_x 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 rules, Ohio has chosen to distribute NO_x annual and NO_x ozone season allowances in a manner that differs in selected respects from the distribution in the Part 96 model rule. First, as noted above, the State's NO_x ozone season allocation provisions have been modified to bring the State's non-EGUs into the CAIR NO_x ozone season trading program. Second, while Ohio's NO_x ozone season program rules provide the same set aside for new sources as in the Part 96 model rule (reflecting five percent of budgeted emissions for 2009 to 2014 and three percent of budgeted emissions for 2015 and thereafter), the State provides additional set asides of one percent of budgeted emissions for energy efficiency and renewable energy projects and one percent of budgeted emissions for innovative technology projects. Ohio's rules also authorize Ohio EPA to increase the size of these two set asides up to five percent of budgeted emissions in the event that requests for these set asides significantly exceed the one percent level, with provision that a correspondingly smaller number of allowances would be issued in the primary allowance distribution so as to allocate no more than the budgeted number of allowances. In the February 1, 2008 notice, EPA asked Ohio to

clarify these set aside allocation provisions. EPA believes that this revision provides sufficient clarification.

As is done in EPA's model rule, Ohio's rules distribute allowances according to each source's proportion of heat input of subject sources. CAIR NO_x ozone season allowances for non-EGUs are distributed according to heat input from a separate allowance pool from the pool for EGUs.

F. Allocation of NO_x Allowances From Compliance Supplement Pool

CAIR establishes a CSP to provide an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x 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 annual NO_x model trading rule 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 the States.

Consistent with the flexibility given to States in CAIR, Ohio has chosen to adopt a modified version of the provisions of the CAIR NO_x annual model trading rule concerning the allocation of allowances from the CSP. EPA approved these provisions, as discussed in EPA's earlier rulemaking. (*See* 73 FR 6038 (February 1, 2008).) In brief, Ohio's CSP is comprised of 25,037 allowances. Unlike the model rule, which allocates allowances in the amount that either (1) early reductions occur, or (2) allowances are needed to avoid disruption of electricity supply (provided the total does not exceed the State's share of the CSP), Ohio's rule provides (1) an initial allocation reflecting early reductions, limited to the source's proportionate share of the CSP, with provision for (2) distribution of the remainder of the CSP according to the distribution of additional early reductions. Ohio's recent rulemaking did not significantly change these provisions, but the revised rule does clarify that Ohio will submit CSP allocations to the Administrator by

November 30, 2009, as EPA requested in its February 1, 2008, rulemaking notice. The revised rule continues to satisfy EPA requirements.

G. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow 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. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Consistent with this flexibility, Ohio has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program, the CAIR NO_x ozone season trading program, and the CAIR SO₂ trading program. EPA approved Ohio's earlier version of rules authorizing these opt-ins (*see* 73 FR 6038 (February 1, 2008)), and Ohio's revised rules make only minor ministerial changes.

VII. Final Action

EPA is approving Ohio's full CAIR SIP revision, which includes rules submitted on July 15, 2009, and August 13, 2009. With these rules, Ohio is providing for continued participation in the EPA-administered CAIR cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. The requested SIP revision meets the applicable requirements of CAIR, which

are set forth in 40 CFR 51.123(o) and (aa), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(o), with regard to SO₂ emissions. In accordance with 40 CFR 52.35 and 52.36, as an automatic consequence of the approval of Ohio's full CAIR SIP revision, EPA is also amending the Ohio plan to withdraw the CAIR FIPs for SO₂, NO_x annual, and NO_x ozone season emissions for Ohio sources.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective November 24, 2009 without further notice unless we receive relevant adverse written comments by October 26, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 24, 2009.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 19, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ 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 KK—Ohio

- 2. Section 52.35 is amended by:
 - a. In paragraph (d)(1), by removing "[STATE NAME]" and by adding "Ohio", in its place; and
 - b. In paragraph (d)(2), by removing "[STATE NAME]" and by adding, "Ohio", in its place.

■ 3. Section 52.36 is amended in paragraph (c) by removing “[STATE NAME]” and by adding, “Ohio”, in its place.

■ 4. Section 52.1870 is amended by revising paragraph (c)(140) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(140) On July 15, 2009, and August 13, 2009, Ohio submitted rules addressing the requirements of the Clean Air Interstate Rule.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rule 3745-109-01 “CAIR NO_x annual, CAIR SO₂ and CAIR NO_x ozone season trading programs definitions and general provisions.”, Rule 3745-109-04 “CAIR NO_x allowance allocations.”, Rule 3745-109-07 “Monitoring and Reporting.”, Rule 3745-109-08 “CAIR NO_x opt-in units.”, Rule 3745-109-11 “CAIR SO₂ allowance tracking system.”, Rule 3745-109-12 “CAIR SO₂ allowance transfers.”, Rule 3745-109-13 “Monitoring and reporting.”, Rule 3745-109-14 “CAIR SO₂ opt-in units.”, Rule 3745-109-17 “CAIR NO_x ozone season allowance allocations.”, Rule 3745-109-18 “CAIR NO_x ozone season allowance tracking system.”, Rule 3745-109-19 “CAIR NO_x ozone season allowance transfers.”, Rule 3745-109-20 “Monitoring and reporting.”, and Rule 3745-109-21 “CAIR NO_x ozone season opt-in units.”, adopted on July 6, 2009, effective on July 16, 2009.

(B) July 6, 2009, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(C) Ohio Administrative Code Rule 3745-109-02 “CAIR designated representative for CAIR NO_x sources.”, Rule 3745-109-03 “Permits.”, Rule 3745-109-05 “CAIR NO_x allowance tracking system.”, Rule 3745-109-06 “CAIR NO_x allowance transfers.”, Rule 3745-109-09 “CAIR designated representative for CAIR SO₂ sources.”, Rule 3745-109-10 “Permits.”, Rule 3745-109-15 “CAIR designated representative for CAIR NO_x ozone season sources.”, and Rule 3745-109-16 “Permits.”, adopted on September 17, 2007, effective on September 27, 2007.

(D) September 17, 2007, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

■ 5. Section 52.1891 is removed.

■ 6. Section 52.1892 is removed.

[FR Doc. E9-23254 Filed 9-24-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0506; FRL-8962-4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Determination of Clean Data for the 1997 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Johnstown (Cambria and Indiana Counties), Lancaster (Lancaster County), Reading (Berks County), and York (York County), Pennsylvania nonattainment areas for the 1997 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) have clean data for the 1997 PM_{2.5} NAAQS.

DATES: *Effective Date:* This final rule is effective on September 25, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0506. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. When Is This Action Effective?
- IV. What Is EPA’s Final Action?
- V. What Are the Statutory and Executive Order Reviews?

I. What Action Is EPA Taking?

EPA is determining that the Johnstown, Lancaster, Reading, and York nonattainment areas have clean data for the 1997 PM_{2.5} NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 PM_{2.5} NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2009, which are available in the EPA Air Quality System (AQS) database, but not yet certified, show that these areas continue to meet the 1997 PM_{2.5} NAAQS.

Other specific requirements of the determination and the rationale for EPA’s proposed action are explained in the notice of proposed rulemaking (NPR) published on July 31, 2009 (74 FR 38158) and will not be restated here. No public comments were received in response to the NPR.

II. What Is the Effect of This Action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for these areas to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 PM_{2.5} NAAQS for so long as these areas continue to meet the 1997 PM_{2.5} NAAQS.

III. When Is the Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” As noted above, this determination of attainment suspends the requirements for the Johnstown, Lancaster, Reading, and York, Pennsylvania PM_{2.5} nonattainment areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and any