

approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule, pertaining to Virginia's control of particulate matter from pulp and paper mills, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-12838 Filed 7-2-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and Part 97

[Docket No. EPA-R02-OAR-2007-0233; FRL-8334-9]

Approval and Promulgation of Implementation Plans; New Jersey: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on a revision to New Jersey's State Implementation Plan (SIP) submitted on February 6, 2007. EPA is proposing to fully approve its incorporation into the SIP provided New Jersey's final rule is consistent with the modifications discussed herein.

This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR) and the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO₂), and annual and ozone season oxides of nitrogen (NO_x) emissions. EPA is not proposing to make any changes to the CAIR FIPs, but is proposing to the extent EPA approves New Jersey's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On April 28, 2006, EPA promulgated CAIR FIPs for States covered by CAIR as a backstop to implement the requirements of CAIR until States have obtained fully approved SIPs to replace the FIPs. The FIPs require certain electric generating units (EGUs) to participate in the Federal CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. The CAIR FIPs also provide that States may submit "abbreviated" SIP revisions to replace or supplement specific elements of the FIPs, leaving the remainder of the overall FIPs in place, rather than submitting full SIP revisions that replace the FIPs.

The New Jersey SIP revision that EPA is proposing to approve is an abbreviated SIP revision that will replace two provisions of the CAIR FIP that allow the State to: (1) Use a methodology chosen by the State for allocation of annual and ozone season NO_x allowances and; (2) use a methodology chosen by the State for allocation of NO_x annual allowances from the NO_x annual Compliance Supplemental Pool (CSP). The revision retires, rather than allocates allowances from the NO_x annual CSP.

The SIP revision that EPA is proposing to approve will also satisfy New Jersey's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intent of this proposed revision is to approve a State specific CAIR program which will result in emission reductions necessary to prevent the interstate transport of air pollutants. The revision also shows that the interstate transport of pollutants from the State has been adequately addressed in the applicable implementation plan.

DATES: Comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2007-0233, by one of the following methods:

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

2. *E-mail*: Werner.Raymond@epa.gov.

3. *Fax*: (212) 637-3901.

4. *Mail*: Docket ID No. EPA-R02-OAR-2007-0233, Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

5. *Hand Delivery or Courier*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2007-0233. 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 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 or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. The telephone number is (212) 637-3702. Mr. Fradkin can also be reached via electronic mail at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action Is EPA Proposing To Take?
- II. What Is the Regulatory History of CAIR and the CAIR FIPs?
- III. What Are the General Requirements of CAIR and the CAIR FIPs?
- IV. What Are the Types of CAIR SIP Submittals?
- V. What Is the Result of EPA's Evaluation of New Jersey's CAIR SIP Submittal?
 - A. State Budgets for Allowance Allocations
 - B. CAIR Cap-and-Trade Programs
 - C. Applicability Provisions for Non-EGUs NO_x SIP Call Sources
 - D. NO_x Allowance Allocations

- E. Allocation of NO_x Allowances From the Compliance Supplement Pool
- F. Individual Opt-In Units
- G. Satisfying Section 110(a)(2)(D)(i) of the Clean Air Act
- VI. Conclusion
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing To Take?

CAIR SIP and 110(a)(2)(D)(i) Approval

EPA is proposing to approve a revision to New Jersey's SIP, submitted on February 6, 2007, which was published in the New Jersey Register on February 5, 2007. The revision modifies the application of certain provisions of the CAIR FIP which requires emission reductions of SO₂, NO_x annual, and NO_x ozone season emissions. (As discussed later, this less comprehensive CAIR SIP is termed an abbreviated SIP.) This revision includes a new proposed regulation, N.J.A.C. 7:27-30, Clean Air Interstate Rule (CAIR) NO_x Trading Program. As part of the revision, New Jersey has also proposed at N.J.A.C. 7:27-31.23 the date when New Jersey's CAIR NO_x Trading Program will replace New Jersey's NO_x Budget Trading Program (Subchapter 31).

This action is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a State submission before it has been formally adopted and submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

This proposed approval is contingent upon New Jersey making the necessary changes to New Jersey's proposed CAIR rule in order to address EPA's concerns discussed in section V, Part D (NO_x Allowance Allocations). If EPA determines New Jersey's final submission is consistent with the necessary changes outlined in this proposed action, EPA may proceed to publish its full approval of New Jersey's CAIR SIP in the **Federal Register**. The final rule that New Jersey submits to EPA must be consistent with the changes discussed in this action for EPA to fully approve its incorporation into the SIP.

If New Jersey is unable to make the required changes upon adoption, and must repropose their rule, EPA will finalize a partial approval in lieu of a full approval. Under the partial approval alternative, EPA would approve those portions of the rule

consistent with EPA requirements into the SIP and disapprove those not consistent. EPA believes the approvable portions of the rule strengthen New Jersey's SIP by allowing the State to be the implementing authority, and make allocations consistent with New Jersey's air quality goals. EPA recognizes that the Clean Air Act assigns first responsibility to the States, and it is EPA's preference to defer, wherever possible, to States the decisions about control mechanisms to prevent significant contribution, including States' decisions about allocation of NO_x allowances. If EPA finalizes a partial approval, EPA would concurrently disapprove those portions of the rule for not meeting those applicable requirements.

New Jersey 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 SO₂, NO_x annual, and NO_x ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_x allowances for the NO_x annual, and NO_x ozone season trading programs. The CAIR FIPs provide that this methodology, if approved as EPA is proposing, will be used to allocate NO_x allowances to sources in New Jersey, instead of the Federal allocation methodology otherwise provided in the FIPs. The SIP revision also retires rather than allocates allowances from the NO_x annual Compliance Supplement Pool (CSP). Consistent with the flexibility provided in the FIPs, these provisions, if approved, will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for New Jersey. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves New Jersey's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval. New Jersey's proposed rule does not modify the CAIR FIP regarding SO₂.

Because New Jersey's CAIR Program will replace the State's NO_x Budget Program (subchapter 31) beginning with the 2009 control period, it is necessary for New Jersey to establish at N.J.A.C. 7:27-31.23 a transition date for the NO_x Budget Trading Program to prevent an overlap of ozone season cap and trade programs for NO_x. The NO_x Budget Trading Program's non-electric generating units and small electric generating units (EGUs) that are not covered under New Jersey's CAIR NO_x Trading Program will be subject to New Jersey's Reasonable Available Control Technology (RACT) or state of the art

rules. EPA will propose a separate rulemaking on New Jersey's RACT at a later date.

In addition, EPA is also proposing to approve a revision to New Jersey's SIP to address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act. This section of the Act requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

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

The Clean Air Interstate Rule (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 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 for NO_x 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_{2.5} 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_{2.5} NAAQS. These May 25, 2005 findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (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 August 17, 2006 EPA issued guidance for SIP submissions states should make to address the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} NAAQS.

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 SO₂, NO_x annual, and NO_x ozone-season model trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and NO_x 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 (SO₂, NO_x annual, and NO_x ozone season) in all States covered by a 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_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 more CAIR-related final rules that added the State 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. The five issues addressed SO₂ allocation methodology; fuel adjustment factors used in establishing State NO_x budgets; inputs to the fine particle (PM_{2.5}) modeling used to determine whether Minnesota should be included in the CAIR region for PM_{2.5}; EPA's determination that Florida should be included in the CAIR region for ozone; and the potential impact of a judicial opinion, *New York v. EPA*, 413 F.3d 3 (DC Cir. 2005), on EPA's previous

determination that CAIR is highly cost-effective and timing of compliance dates.

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 their CAIR NO_x 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_x 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 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 all NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_x ozone season trading program;
2. Provide for allocation of NO_x annual or ozone season allowances by the State, rather than the Administrator, and use a methodology chosen by the State;
3. Provide for allocation of NO_x annual allowances from the CSP by the State, rather than by the Administrator, and use 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 that approved SIP revision.

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_x 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 February 6, 2007 submittal from New Jersey has been submitted as an abbreviated SIP revision.

V. What Is the Result of EPA's Evaluation of New Jersey's CAIR SIP Submittal?

A. 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 CAA. Under CAIR, each allowance allocated under 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.

The CAIR FIP established the EGU budgets for New Jersey as 12,670 tons for the years 2009–2014 (Phase I) and 10,558 tons for the years 2015 and beyond (Phase II) for NO_x annual emissions; 6,654 tons for the years 2009–2014 (Phase I) and 5,545 tons for the years 2015 and beyond (Phase II) for NO_x ozone season emissions; and 32,392 tons for the years 2010–2014 (Phase I) and 22,674 tons for the years 2015 and beyond (Phase II) for SO₂ emissions. New Jersey's SIP revision, proposed for approval in today's action, does not affect these budgets, which are the total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade program under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

B. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season FIPs 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 FIPs are similar, there are some differences. For example, the NO_x annual FIP (but not the NO_x ozone season FIP) 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 FIP reflects the fact that the CAIR NO_x ozone season trading program replaces the NO_x SIP Call trading program for EGUs after the 2008 ozone season and is coordinated

with the NO_x SIP Call program. States also have the option of continuing to meet their NO_x SIP Call non-EGU reduction obligations by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program. In addition the NO_x ozone season FIP 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.

The provisions of the CAIR SO₂ FIP are also similar to the provisions of the NO_x annual and ozone season FIPs. However, the SO₂ FIP is coordinated with the ongoing Acid Rain SO₂ cap-and-trade program under CAA title IV. The SO₂ 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 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 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.

New Jersey is subject to the CAIR FIPs for ozone and PM_{2.5} and the CAIR FIP trading programs for SO₂, NO_x annual, and NO_x ozone season applies to sources in New Jersey. 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. New Jersey has elected to propose these rules for its EGU sources as part of the abbreviated SIP which was submitted on February 6, 2007.

C. Applicability Provisions for Non-EGU NO_x 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 MWe 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 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_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 MWe or less), that the State currently requires to be in the NO_x SIP Call trading program. Consistent with the flexibility given to States in the CAIR FIP, New Jersey has not chosen to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the State's NO_x SIP Call trading program. New Jersey's non-EGUs and small electric generating units (EGUs) will be subject to Reasonable Available Control Technology (RACT) or state of the art rules.

D. 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 at least 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_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 FIP, New Jersey has chosen to replace the provisions of the CAIR NO_x annual and ozone season FIP concerning allowance allocations with its own methodology.

New Jersey will distribute NO_x annual and ozone season allowances to CAIR units based upon historical electrical and thermal output. Allowances, which will be distributed (not auctioned), will be based on three years of data. For control periods 2009–2011, NO_x annual and ozone season allowances will be calculated based on data from years 2003, 2004, and 2005. New Jersey will submit 2009–2011 NO_x allocations to EPA by April 30, 2007. For control periods in years 2012 and thereafter, the calculation of the allocation shall be based on data from the three most recent years prior to the year the allocation is due to the EPA (*i.e.* 2012 calculations which is due October 31, 2008 will be calculated based on data from years 2005 through 2007). The allocations for the control periods beginning in 2012 are due to EPA by October 31, 2008 and October 31 of each year thereafter for the fourth year after the year of the notification deadline.

New Jersey has established set-asides for new source/growth ("New Source/Growth Reserve"), and energy efficiency and renewable energy programs or techniques ("Incentive Reserve"). New Jersey is allocating ten percent of the State's CAIR NO_x annual and CAIR NO_x ozone season budgets to the New Source/Growth Reserve, and five percent of the State's CAIR NO_x annual and CAIR NO_x ozone season budgets to the Incentive Reserve each year.

The priority of the New Source/Growth Reserve is to hold aside allowances for distribution to new CAIR units. Any remaining allowances would be available for distribution to low NO_x emission rate units that emit more tons of NO_x than the number of allowances allocated for the control period.

The purpose of the incentive reserve is to hold aside allowances so that they are available for distribution after the control period to persons who claim incentive allowances, based on their

energy savings or the generation of electricity through the implementation of environmentally beneficial techniques.

If the New Source/Growth Reserve or Incentive Reserve is under-allocated, allowances will be distributed to units in equal proportion to the number of allowances available in the reserve. New Jersey will allow allowances from both reserves to be used interchangeably if one reserve is over-allocated while the other is under-allocated. Any allowances remaining in the reserves will remain in the Incentive Reserve or the New Source/Growth Reserve to be available for allocation in the following year.

Unallocated allowances from the existing New Source/Growth and Incentive Reserves from New Jersey's NO_x Budget Trading Program (Subchapter 31) for the 2008 control period will be carried over for use in the 2009 CAIR NO_x ozone season.

New Jersey is allocating to the New Source/Growth Reserve 1,267 CAIR NO_x annual allowances and 665 CAIR NO_x ozone season allowances of the State budget each year for vintage years 2009 through 2014. For years 2015 and thereafter, New Jersey will allocate 1,056 CAIR NO_x annual allowances and 555 CAIR NO_x ozone season allowances of the State budget each year into the reserve.

New Jersey is allocating to the Incentive Reserve 634 CAIR NO_x annual allowances and 333 CAIR NO_x ozone season allowances of the State budget each year into this reserve for vintage years 2009 through 2014. For years 2015 and thereafter, New Jersey will allocate 528 CAIR NO_x annual allowances and 277 CAIR NO_x ozone season allowances of the State budget each year into the reserve.

Several provisions of New Jersey's NO_x allocation proposal are inconsistent with the NO_x allocation timing requirements of the abbreviated SIP revision requirements and the CAIR FIP trading programs. Full approval of New Jersey's proposed regulation by EPA is contingent upon New Jersey modifying the proposed rule in order to clarify that EPA's NO_x allocation timing requirements will be met under New Jersey's program as discussed in this section. Sections 51.123(p)(1)(ii)(B) and (e)(2)(ii)(C) of CAIR require that the State determines and notifies the Administrator of each existing unit's allowance allocation at least 3 years in advance of the CAIR FIP NO_x annual and ozone season programs. Sections 51.123(p)(1)(ii)(C) and (e)(2)(ii)(D) require that the State determines, and notifies the Administrator of each new

unit's allowances by October 31 (for the CAIR NO_x annual trading program) or July 31 (for the CAIR NO_x ozone season trading program) of the year for which the allowances are being allocated.

New Jersey's proposed regulation does not meet NO_x allocation timing requirements for existing or new units that must surrender and transfer allowances to EPA for retirement for the year in which the unit shuts down and any year thereafter. As currently written in the proposed rule, the owner or operator of an existing unit that is required to surrender allowances will no longer be able to buy or sell allowances, or undertake other allowance market activities, that were provided three years in advance and already recorded into their compliance account. Additionally, the owner or operator of a new unit could not buy or sell allowances, or undertake other allowance market activities, in reliance on its allocations provided in advance on October or July.

It is not clear from New Jersey's proposal what the timing would be for surrendering the allowances, and whether the State intended for recorded allowances to be surrendered. New Jersey should clarify the provisions of the appropriate section regarding permanently shut down units to be retired, section 7:27–30.3(g), by either removing this section from the rule, or by clarifying that the State can discontinue making future allocations to units that permanently shut down.

New Jersey's proposed regulation does not meet NO_x allocation timing requirements with regard to the provision in New Jersey's proposed rule which provides that the Department may determine that allocations for existing (or new) units for current or past years had erroneously allocated too many or too few allowances based on inaccurate data or projections. As currently written in the proposed rule, it is unclear how long after determination and recordation of an allocation the Department may determine that the allocation was incorrect. The inclusion of the word "projection" also suggests New Jersey will be correcting allocations that were based on projections. New Jersey should correct this problem by either removing the allocation correction provision, 7:27–30.3(h), from the rule, or modify this section in order to address NO_x allocation timing requirements. If NJ chooses to retain the provision, New Jersey may limit this provision to errors of calculation, errors in the allowable emission rates used, and/or errors in data on actual operations and that does not correct allocations once the

allocations are recorded by the Administrator.

New Jersey's proposed rule also provides that if the sum of new unit allocations (determined by October 31 or July 31 of the year for which allocations are made) and the existing unit growth allocations (determined by the end of the year for which allocations are made) exceeds the total amount of the New Source/Growth Reserve for the year, all the allocations from the reserve will be reduced on a pro-rata basis so that the total amount allocated to these new and existing units does not exceed the reserve. New Jersey should clarify that the allocation-proration provisions will be applied to new unit allocations before the October 31 deadline or July 31 deadline for submission of new unit allocations to EPA and applied to the existing unit growth allocations before the March 1 deadline for submission of those allocations to EPA.

E. Allocation of NO_x Allowances From the Compliance Supplement Pool

The CSP provides 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 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_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 NO_x 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.

EPA has allocated to New Jersey allowances equal to 660 tons of NO_x annual emissions for possible distribution.

Consistent with the flexibility given to States in the FIP, New Jersey has chosen to modify the provisions of the CAIR NO_x annual FIP concerning the allocation of allowances from the CSP. New Jersey has chosen to retire the CSP allowances budgeted for New Jersey by not allocating them to CAIR units. New Jersey has maintained in their rule that the CSP allowances, if allocated, would delay attainment in New Jersey of the NAAQS for ozone and PM_{2.5}. New Jersey anticipates that New Jersey CAIR units will be able to meet their emission

limits without risk to the reliability of the energy supply without resorting to the CSP.

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, New Jersey has chosen not to allow non-EGUs meeting the FIP-specified requirements to participate in the CAIR NO_x annual trading program, the CAIR NO_x ozone season trading program, and the SO₂ trading program. Therefore, non-EGUs in New Jersey cannot opt into either the CAIR trading program under EPA's

CAIR FIP or New Jersey's abbreviated SIP.

G. Satisfying Section 110(a)(2)(D)(i) of the Clean Air Act

Section 110(a)(2)(D)(i) of the CAA requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, New Jersey's SIP revision with respect to the statutory requirements is consistent with the guidance.

New Jersey addresses the first two of these four elements by complying with the requirements of CAIR. New Jersey satisfies these requirements either by relying on the existing CAIR FIPs, or through approval of this SIP revision.

The third element New Jersey addresses was prevention of significant deterioration (PSD). In accordance with the guidance issued on August 15, 2006, States may continue to rely on their existing Nonattainment New Source Review (NNSR) and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent States. For 8-hour ozone, the State has met the obligation by confirming that the existing ozone Nonattainment New Source Review (NNSR) permitting program remains in effect and applies to the 8-hour ozone NAAQS standard for the State's major stationary sources. New Jersey has noted that the State's current NNSR program retains the lower applicability levels and higher off-set ratios previously required under the States 1-hour ozone classification and therefore is more stringent than required under the 8-hour ozone classification. The State has indicated that it's on track to meet its June 15, 2007 obligations to submit a final attainment demonstration for the 8-hour ozone NAAQS by that date. For PM_{2.5}, the State has confirmed that the State's NNSR and PSD programs are being implemented in accordance with EPA's interim guidance calling for the use of PM₁₀ as a surrogate for PM_{2.5}. New Jersey commits to revising its NNSR program and adopting a PSD program after EPA finalizes its PM_{2.5} implementation rule.

It should be noted that the entire State of New Jersey is nonattainment for 8-hour ozone necessitating only a NNSR program (not PSD) for ozone. For PM_{2.5} the State has both attainment and non-attainment areas necessitating both NNSR and PSD programs.

Consistent with EPA's August 15, 2006 guidance, at this time, it is impossible for New Jersey to accurately determine whether there is interference with measures in another State's SIP designed to protect visibility, which is the fourth element that was addressed. New Jersey has indicated that it will address the visibility protection requirements once the regional haze SIP is completed and submitted to EPA in December of 2007.

VI. Conclusion

New Jersey is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to States in the FIPs, New Jersey has proposed to adopt under N.J.A.C. 7:27–30, Clean Air Interstate Rule (CAIR) NO_x Trading Program, provisions for allocating allowances under the CAIR FIP NO_x annual and ozone season trading programs. In addition, New Jersey has also proposed at N.J.A.C. 7:27–31.23 the date when New Jersey's CAIR NO_x Trading Program will replace New Jersey's NO_x Budget Trading Program (Subchapter 31). In addition, New Jersey has proposed to adopt in the abbreviated SIP revision provisions that retire CSP allowances.

EPA is proposing to approve New Jersey's abbreviated CAIR SIP revision. This proposed approval is contingent upon New Jersey making the necessary changes to New Jersey's proposed CAIR rule in order to address EPA's concerns discussed in section V, Part D (NO_x Allowance Allocations) concerning shutdown units, correction of allocations to new and existing units, and prorating for the New Source/Growth Reserve. If EPA determines New Jersey's final submission is consistent with the necessary changes outlined in this proposed action, EPA may proceed to publish its full approval of New Jersey's CAIR SIP in the **Federal Register**, and approve its incorporation into the SIP. To the extent EPA approves New Jersey's SIP revision, EPA would not make any changes to the CAIR FIP, but would amend the appropriate appendices of 40 CFR part 97 in the CAIR FIP trading rules simply to note approval.

Although EPA expects New Jersey to make the necessary changes to their proposed rule upon final adoption, EPA will finalize a partial approval/disapproval should New Jersey be unable to do so. Although the rule does not currently meet all of the applicable requirements in 40 CFR 51.123(p) and (e) with regard to NO_x annual and NO_x ozone season emissions, EPA believes that the approvable portions of the rule strengthen New Jersey's SIP by allowing the State to be the implementing authority, and making allocations consistent with New Jersey's air quality goals. Partial approval/disapproval will result in EPA approval of New Jersey's initial NO_x allocations for existing units for the 2009–2011 control periods. EPA would not make any changes to the CAIR FIP, but would amend the appropriate appendices of 40 CFR part 97 in the CAIR FIP trading rules to note partial approval. If New Jersey is unable to make the necessary changes, EPA proposes partial approval/disapproval of New Jersey's proposed rule as follows: Subchapter 30 approval of all sections except “7:27–30.3 Allocation of CAIR NO_x annual allowances and CAIR NO_x ozone season allowances”. EPA is approving portions of 7:27–30.3 which address the allocation of NO_x allowances to existing units and to the incentive reserve, rounding allowances to the nearest whole number, and consideration of other data by the department if the data is unusable. (7:27–30.3(a), (b), (c)2, (c)3, (c)4ii(1), (c)4ii(3), (e), and (f)). EPA is disapproving provisions for the allocation to the new source/growth reserve, post control period allocations, provisions that require any unit (existing or new) that permanently shuts down to surrender and transfer allowances to EPA for retirement, and correction of allowances allocated erroneously or were allocated based on data or projections that are determined to be inaccurate. (7:27–30.3(c)1, (c)4i, (c)4ii(2), (c)4iii, (d), (g), and (h).

EPA is proposing approval of “7:27–31.23 Replacement of the NO_x Budget Program”, and “7:27A–3.10 Civil administrative penalties for violation of the rules adopted pursuant to the Act”.

EPA is also proposing that this revision adequately addresses the required elements of 110(a)(2)(D)(i) with the exception of the protect visibility requirement. This requirement will be re-evaluated after the regional haze SIP is completed and submitted to EPA in December 2007.

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 proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under State law and would 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 proposal also does not have tribal implications because it would 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 proposed action also does not have Federalism implications because it would 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 proposes to approve a State rule implementing a Federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA’s role is to approve State choices,

provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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 proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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.

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

Dated: June 25, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7-12874 Filed 7-2-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2005-VA-0012; FRL-8333-9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of Total Reduced Sulfur From Pulp and Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to a Section 111(d) regulation submitted by the Commonwealth of Virginia Department of Environmental Quality. The revisions pertain to amendments to an existing regulation to

control total reduced sulfur (TRS) from pulp and paper mills. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-VA-0012 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail:

cripps.christopher@epa.gov.

C. Mail: EPA-R03-OAR-2005-VA-0012, Christopher Cripps, Acting Chief, Air Quality and Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2005-VA-0012. 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 information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. 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, any form of encryption, and be free of any defects or viruses.