

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 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 5, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA-R05-OAR-2007-0519; FRL-8466-2]

### Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to conditionally approve a revision to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for the state of Michigan, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not

proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is proposing to conditionally approve is an abbreviated SIP revision that addresses: The applicability provisions for the NO<sub>x</sub> ozone season trading program under the CAIR FIP and supporting definitions of terms; the methodology to be used to allocate NO<sub>x</sub> annual and ozone season NO<sub>x</sub> allowances under the CAIR FIP and supporting definitions of terms; and provisions for opt-in units under the CAIR FIP. Michigan will be submitting additional SO<sub>2</sub> rules in the future.

**DATES:** Comments must be received on or before October 12, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0519, by one of the following methods:

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

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

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-2007-0519. 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

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## I. What Action Is EPA Proposing To Take?

### CAIR SIP Approval

EPA is proposing to conditionally approve a revision to Michigan's SIP, submitted on July 16, 2007, that would modify the application of certain provisions of the CAIR FIP concerning NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) The CAIR SO<sub>2</sub> FIP will remain in place unaffected. Michigan is subject to the CAIR FIP that implements the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered federal CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> annual and NO<sub>x</sub> ozone season trading programs. The CAIR FIP provides that this methodology, if approved as EPA is proposing, will be used to allocate NO<sub>x</sub> allowances to sources in Michigan, instead of the federal allocation methodology otherwise provided in the FIP. The SIP revision also provides a methodology for allocating the compliance supplement pool (CSP) in the CAIR NO<sub>x</sub> annual trading program, expands the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program, and allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs. Consistent with the flexibility provided in the FIP, these provisions, if approved, will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Michigan. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

This SIP revision is being proposed for conditional approval as opposed to a full or complete approval because of several minor deficiencies that must be addressed. If the conditions for full

approval are not met within one year of the effective date of EPA approval, this conditional approval will revert to a disapproval, as of the deadline for meeting the conditions, without further action required by EPA. In the event the conditional approval reverts to a disapproval, EPA will publish a notice in the **Federal Register** to inform the public. If Michigan does meet the conditions necessary for a full approval, EPA will publish a **Federal Register** notice finalizing the full approval.

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

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

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA made national findings, effective May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM<sub>2.5</sub> NAAQS. These findings started a 2-year clock for EPA to promulgate a 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 April 28, 2006, EPA promulgated a FIP 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 FIP until the state fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIP requires certain EGUs to participate in the EPA-administered CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season model trading programs, as appropriate. The CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all states covered by CAIR FIP or SIP trading programs for that pollutant. The CAIR FIP also allows states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO<sub>x</sub> allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

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

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

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

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

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> ozone season trading programs.

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

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

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

1. Include NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO<sub>x</sub> ozone season trading program;
2. Provide for allocation of NO<sub>x</sub> annual or ozone season allowances by the state, rather than the Administrator,

and using a methodology chosen by the state;

3. Provide for allocation of NO<sub>x</sub> annual allowances from the compliance supplement pool (CSP) by the state, rather than by the Administrator, and using the state's choice of allowed, alternative methodologies; or

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

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the state by 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<sub>x</sub> allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the state's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the July 16, 2007, submittal from Michigan has been submitted as an abbreviated SIP revision.

#### V. Analysis of Michigan's CAIR SIP Submittal

##### A. Nature of Michigan's Submittal

On July 16, 2007, Michigan submitted draft rules and supporting material for addressing CAIR requirements. The Michigan Department of Environmental Quality (MDEQ) held a public hearing on these proposed rules on April 2, 2007. MDEQ also provided a 30-day comment period that ended on April 2, 2007.

##### B. Summary of Michigan's Rules

Part 8 of Michigan Air Pollution Control Rules, entitled, "Emission Limitations and Prohibitions—Oxides of Nitrogen," includes provisions limiting the emissions of NO<sub>x</sub> from stationary sources in Michigan. While Part 8 contains many sections, Michigan submitted only a portion of them to address the CAIR requirements. Specifically, Michigan submitted rules 802a, 803, 821 through 826, and 830 through 834 for federal approval.

• Rule 802a, entitled "Adoption by reference," contains adoption by reference language. Michigan has adopted necessary portions of federal regulations including parts of: EPA's

Acid Rain Program (specifically 40 CFR 72.2 and 72.8), Continuous Emission Monitoring Program (the entire 40 CFR part 75), NO<sub>x</sub> Model Rule Compliance 40 CFR 96.54, and the CAIR SO<sub>2</sub> and NO<sub>x</sub> FIP rules (specifically 40 CFR 97.2, 97.102, 97.103, 97.104, 97.302, 97.303, 97.304, 97.180 to 97.188, 97.380 to 97.388).

• Rule 803, entitled "Definitions," modifies the existing Michigan definitions section to address the CAIR requirements. In order to incorporate sources affected by the NO<sub>x</sub> SIP Call into the CAIR NO<sub>x</sub> trading program, and also to accommodate Michigan's NO<sub>x</sub> allocation methodology, the state has adopted definitions that did not already exist in the CAIR FIP.

• Rule 821, entitled "CAIR NO<sub>x</sub> ozone season and annual trading programs; applicability determinations," contains applicability criteria. Michigan has incorporated the CAIR applicability from the CAIR FIP, has included the non-EGU sources from the NO<sub>x</sub> SIP Call, and also allows sources of renewable energy and renewable energy projects to receive NO<sub>x</sub> allowances under the state's allocation methodology. Michigan has also included in this section allocation adjustments based on EGU fuel type.

• Rule 822, entitled "CAIR NO<sub>x</sub> ozone season trading program; allowance allocation," establishes the NO<sub>x</sub> budgets for the ozone season control period and establishes the allocation methodology procedures for the ozone season. These provisions describe how Michigan sources under the CAIR FIP, non-EGUs formerly affected by the NO<sub>x</sub> SIP Call, and renewable energy sources will be allocated NO<sub>x</sub> ozone season allowances.

• Rule 823, entitled "New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO<sub>x</sub> ozone season trading program; allowance allocations," establishes the provisions for a set-aside ozone season control period allocation pool for new EGUs, new non-EGUS, and newly affected EGUS (which were not included in the original NO<sub>x</sub> SIP Call program due to geographic location).

• Rule 824, entitled "CAIR NO<sub>x</sub> ozone season trading program; hardship set-aside," establishes the provisions for a hardship set-aside ozone season control period allocation pool to address issues for small (*i.e.*, employing fewer than 250 people) businesses that can demonstrate that the controls required for this source result in excessive or prohibitive costs for compliance.

• Rule 825, entitled "CAIR NO<sub>x</sub> ozone season trading program; renewable set-aside," establishes the provisions for an ozone season control

period allocation pool to be allocated to renewable energy sources or renewable energy projects.

- Rule 826, entitled “CAIR NO<sub>x</sub> ozone season trading program; opt-in provisions,” adopts by reference the ozone season control period opt-in provisions under the federal CAIR FIP rules, specifically 40 CFR 97.380 to 97.388.
- Rule 830, entitled “CAIR NO<sub>x</sub> annual trading program; allowance allocations,” establishes the NO<sub>x</sub> budgets for the annual control period, and establishes the allocation methodology procedures for the annual control period.
- Rule 831, entitled “New EGUs under CAIR NO<sub>x</sub> annual trading program; allowance allocations,” establishes the provisions for a set-aside annual control period allocation pool for new EGUs and the pool allocation methodology.
- Rule 832, entitled “CAIR NO<sub>x</sub> annual trading program; hardship set-aside,” establishes the provisions for a set-aside annual control period allocation pool to address issues for small (*i.e.*, employing fewer than 250 people) businesses that can demonstrate that the required controls will result in excessive or prohibitive compliance costs.
- Rule 833, entitled “CAIR NO<sub>x</sub> annual trading program; compliance supplement pool,” establishes the provisions for an annual control period compliance supplement pool that provides for allocation for early reduction credit generation for existing sources, and for the newly affected EGUs that were not in the original NO<sub>x</sub> Budget Program that can demonstrate that compliance during the 2009 control period would create an undue risk to the reliability of the electrical supply.
- Rule 834, entitled “Opt-in provisions under the CAIR NO<sub>x</sub> annual trading program,” adopts by reference the opt-in provisions for the annual control period under the federal CAIR rules. While Michigan has developed an abbreviated SIP, it differs from most other states because of artifacts from the NO<sub>x</sub> SIP Call. While many states are affected by the NO<sub>x</sub> SIP Call, Michigan is one of only a few states that is not entirely covered under the NO<sub>x</sub> SIP Call, due to a modeling boundary that EPA used in atmospheric modeling of pollution sources and downwind effects. Only those Michigan counties that fall, in their entirety, south of 44° latitude are affected by the NO<sub>x</sub> SIP Call. This is the result of a decision in *Michigan v. EPA*, 213 F.3d 663 (DC Cir. March 3, 2000) that established 44° (a modeling boundary) as the appropriate

northern boundary for the NO<sub>x</sub> SIP Call. EPA describes both the court decision and how it applies to Michigan in a **Federal Register** notice dated April 21, 2004 (69 FR 21604, 21622–21627). Although only a portion of Michigan is affected by the NO<sub>x</sub> SIP Call, the entire state is affected by CAIR. In order to transition from the NO<sub>x</sub> SIP Call trading program to the CAIR ozone season trading program, the Michigan rules include additional definitions and provisions to account for this geographic discrepancy.

An additional complication that Michigan has addressed in its rules is that the CAIR requirements for sources of NO<sub>x</sub> begin in 2009. Under the NO<sub>x</sub> SIP Call, Michigan has already issued NO<sub>x</sub> allowances through 2009. Because the 2009 NO<sub>x</sub> SIP Call allowances have already been allocated to the Michigan sources, Michigan included provisions acknowledging the 2009 NO<sub>x</sub> SIP Call allowances and provided that they will be treated as CAIR NO<sub>x</sub> ozone season allowances issued for that year. 2010 will be the first year in which Michigan sources (other than CAIR opt-in units) will be allocated CAIR NO<sub>x</sub> ozone season allowances that were not previously issued as NO<sub>x</sub> SIP Call allowances.

#### C. State Budgets for Allowance Allocations

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

The CAIR FIP established the NO<sub>x</sub> budgets for Michigan as 65,304 tons for NO<sub>x</sub> annual emissions for 2009–2014; 54,420 tons for NO<sub>x</sub> annual emissions for 2015 and thereafter; 28,971 tons for NO<sub>x</sub> ozone season emissions for 2009–2014; and 24,142 tons for NO<sub>x</sub> ozone season emissions for 2015 and thereafter. Michigan’s SIP revision, proposed for conditional approval in today’s action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

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

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

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

Michigan is subject to the CAIR FIP for ozone and PM<sub>2.5</sub>, and the CAIR FIP trading programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season apply to sources in Michigan. Consistent with the flexibility it gives to states, the CAIR FIP provides that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. Michigan’s July 16, 2007, submission is an abbreviated SIP revision.

#### E. Applicability Provisions for Non-EGU NO<sub>x</sub> SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit’s combustion chamber, a generator with

nameplate capacity of more than 25 MWe producing electricity for sale.

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

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all non-EGUs in the state's NO<sub>x</sub> SIP Call trading program.

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

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

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

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. Michigan has chosen to distribute NO<sub>x</sub> annual allowances based upon a heat input based methodology for existing units, with set-asides for new sources and for existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 830 allocates three years of NO<sub>x</sub> annual allowances at a time to existing sources on a heat input basis. This begins in 2007 for the annual control periods of 2009, 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the annual control periods of 2012, 2013 and 2014. By October 31, 2011, and, thereafter, each October 31 of every third year Michigan will submit to EPA allocation for the subsequent three year period.

Under Michigan Rule 831, the new source set-aside for new EGUs is 1,000 tons per year for years 2009–2011, and 1,400 tons per year for years 2012 and thereafter. Allowances for the first annual control period under the new source set-aside are allocated based on 70 percent of a unit's projected emissions. After the first annual control period, new EGUs can request allowances equal to (the number of megawatt hours operated during the previous control period divided by 2,000 lb/ton), multiplied by (1.0 lb NO<sub>x</sub>/megawatt hours). Once a unit has five years of operating data, it is no longer considered a "new" unit and will be allocated allowances as an existing source under Rule 830.

Michigan Rule 832 establishes a hardship set-aside of 1,200 allowances per year for existing sources. Existing sources with fewer than 250 employees that are able to submit a demonstration to Michigan that the control level required by CAIR will result in excessive or prohibitive compliance costs can request allowances from this set-aside pool.

Michigan Rule 833 establishes a compliance supplement pool of 6,491 allowances for existing EGUs and a pool for newly-affected EGUs of 1,856 allowances. For existing EGUs, allowances can be requested if units have made early reductions during calendar year 2007 and 2008. A newly affected EGU can request hardship allowances if it can demonstrate that

compliance with CAIR will result in hardship.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone season FIP concerning allowance allocations with its own methodology. Michigan has chosen to distribute NO<sub>x</sub> ozone season allowances using a heat input-based methodology for existing units, with set-asides for new sources, renewable energy sources, and existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 822 establishes trading budgets for existing EGUs, new EGUs, newly affected EGUs, existing non-EGUs, renewable sources and hardship set-asides. Rule 822 also provides for allocation of three years of NO<sub>x</sub> ozone season control period allowances at a time to existing EGUs and existing non-EGUs on a heat input basis. This begins in 2007 for the ozone season control periods of 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the ozone control periods of 2012, 2013 and 2014. By October 31, 2011, and thereafter by each October 31 of the year that is three years after the last year of allocation submittal, Michigan will submit the next three years of ozone control period allocations to EPA. Allowances for the 2009 ozone control period are the same as were allocated under the NO<sub>x</sub> SIP Call Budget Trading Program.

Rule 823 establishes a set-aside pool for new EGUs, new non-EGUs and newly affected EGUs. Rule 823 also includes the directions for how sources can apply for the allowances in this set-aside. Most EGUs were allocated NO<sub>x</sub> allowances for the 2009 ozone control period under the NO<sub>x</sub> SIP Call. These allowances are now being designated as CAIR NO<sub>x</sub> ozone season allowances issued for the 2009 ozone control period. Newly affected EGUs that were not subject to the NO<sub>x</sub> SIP Call never were allocated 2009 ozone control period allowances under the NO<sub>x</sub> SIP Call, but will need allowances to comply with CAIR in 2009. Therefore, they are being allowed to request allowances from this set-aside. Newly affected sources can request allowances based on their historic heat input. For the first ozone season control period of operation, new EGUs and new non-EGUs can request allowances from this set-aside based on predicted hours of operation. For the four ozone control periods after the first ozone control period of operation, new EGUs may request allowances based on the actual number of megawatt hours of electricity

generated during the ozone control period immediately preceding the request. After a new EGU has five ozone control periods of operating data, it is no longer considered a “new” EGU and is allocated ozone control period allowances per the requirements found in Rule 822.

Rule 824 creates an annual hardship set-aside pool of 650 allowances beginning in 2010. Both existing EGUs and non-EGUs can request allowances from this pool if the company making the request employs fewer than 250 people and can make a demonstration of financial hardship. The number of allowances a source can request will be based on historical heat input.

Rule 825 establishes a set-aside of 200 allowances per year for renewable units. Initially, renewable units can request allowances from this set-aside based on the nameplate capacity of the unit and the predicted hours of operation during the ozone control period. After a renewable unit has been in operation for one ozone control period, the unit can request allowances based on the previous ozone season control period’s actual megawatt hours. Renewable units may only request allowances for three consecutive ozone seasons.

#### *G. Allocation of NO<sub>x</sub> Allowances From the Compliance Supplement Pool*

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

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

Consistent with the flexibility given to states in the FIP, Michigan has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of allowances from the CSP. Michigan Rule 833 establishes an annual compliance supplement pool of 6,491 allowances for existing EGUs and an annual pool for newly-affected EGUs of 1,856 allowances. Existing EGUs can

request allowances if the units have made early reductions during calendar years 2007 and 2008. Newly affected EGUs can request hardship allowances if a demonstration of hardship can be made.

#### *H. 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 FIP, Michigan has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> annual trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.180 to 97.188 by

reference, and Rule 834 makes them applicable to units in the State.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> ozone season trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.380 to 97.388 by reference, and Rule 826 makes them applicable to units in the State.

#### *I. Conditions for Approval*

EPA notes that it has identified several minor deficiencies that are necessary to correct in Michigan’s rules. These minor deficiencies are as follows:

1. In rule 803(3), Michigan needs to add a definition for “commence operation.” This definition, and the revised definition of “commence commercial operation,” are necessary to take account of NO<sub>x</sub> SIP Call units brought into the CAIR NO<sub>x</sub> ozone season trading program that do not generate electricity for sale and to ensure that they have appropriate deadlines for certification of monitoring systems under 40 CFR Part 97.

2. In rule 803(3)(c), Michigan needs to revise the definition for “commence commercial operation,” as described in Condition 1, above.

3. In rule 803(3)(d)(ii), Michigan needs to revise the definition of “electric generating unit” or “EGU.” EPA interprets Michigan’s current rule 803 as properly including in the CAIR NO<sub>x</sub> ozone season trading program all EGUs in Michigan that were subject to the NO<sub>x</sub> SIP Call trading program. Michigan must revise the rule to clarify that all EGUs in Michigan that were subject to the NO<sub>x</sub> SIP Call trading program are included in the CAIR NO<sub>x</sub> ozone season trading program.

4. In rule 823(5)(c), Michigan needs to reference “subrule (1)(a), (b), (c), and (d)” of the rule. While EPA interprets Michigan’s current rule as limiting the new unit set-aside allocations to the amount of allowances in the set-aside, Michigan must revise this provision to clarify the mechanism for implementing this limitation on such allocations.

These minor deficiencies are described in detail in a technical support document in the docket for this rulemaking. By a letter dated August 15, 2007, Michigan committed to making final and effective revisions to its rules by correcting these deficiencies as discussed above by July 20, 2008.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the State to adopt specific enforceable

measures by a date certain that is no more than one year from the date of conditional approval. In this action, we are proposing to approve the SIP revision that Michigan has submitted on the condition that the minor deficiencies in the SIP revision are corrected as discussed above by the date referenced in Michigan's letter, *i.e.*, by July 20, 2008. If this condition is not met within one year of the effective date of final rulemaking, the conditional approval will automatically revert to a disapproval—as of the deadline for meeting the conditions—without further action from the EPA. A notice will be published in the **Federal Register** informing the public of a disapproval. In the event the conditional approval automatically reverts to a disapproval, the validity of allocations made under the SIP revision (including the treatment, of previously allocated 2009 NO<sub>x</sub> SIP Call allowances as 2009 CAIR ozone season allowances) before the date of such reversion to disapproval will not be affected. If Michigan submits final and effective rule revisions correcting the deficiencies as discussed above within one year from this conditional approval being final and effective, EPA will publish in the **Federal Register** a notice to acknowledge this and to convert the conditional approval to a full approval.

#### VI. Proposed Action

EPA is proposing to conditionally approve Michigan's abbreviated CAIR SIP revision submitted on July 16, 2007. Michigan is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Michigan adopts provisions for allocating allowances under the CAIR FIP NO<sub>x</sub> annual and ozone season trading programs. In addition, Michigan adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP, expand the applicability provisions for the CAIR FIP NO<sub>x</sub> ozone season trading program, and allow for individual non-EGUs to opt into the CAIR FIP NO<sub>x</sub> annual and NO<sub>x</sub> ozone season cap-and-trade programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding

provisions of the CAIR FIP in Michigan. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

#### 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 97

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

Dated: September 4, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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