■ For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. Revise § 285.6, paragraph (f), to read as follows:

285.6 Administrative offset under reciprocal agreements with states.

* * * * *

(f) *State debts submitted to FMS for tax refund offset.* A State shall be deemed to have complied with the requirements of paragraph (e)(2) of this section with respect to any State debt that the State certified to Treasury for collection pursuant to § 285.8 of this part.

* * * * *

Dated: October 23, 2009.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–26303 Filed 11–2–09; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2009–0021; FRL–8972–7]

RIN 2060–AP46

Administrative Stay of Clean Air Interstate Rule for Minnesota; Administrative Stay of Federal Implementation Plan To Reduce Interstate Transport of Fine Particulate Matter and Ozone for Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule administratively stays the effectiveness, for Minnesota and Minnesota sources only, of two rules issued under section 110 of the Clean Air Act (CAA) related to the interstate transport of pollutants. On May 12, 2005, EPA issued the Clean Air Interstate Rule (CAIR) requiring Minnesota and other states in the eastern U.S. to submit State Implementation Plan (SIP) revisions to limit sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions in order to eliminate the significant contribution of these states to nonattainment for fine particulate matter ($PM_{2.5}$) and/or ozone, and eliminates interference with maintenance of attainment, in downwind states. On April 28, 2006, EPA issued Federal Implementation Plans (CAIR FIPs) to serve as a backstop until replaced by approved SIPs. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit reversed and remanded CAIR. Among other things, the Court held that EPA had not properly addressed possible errors in analysis supporting the inclusion of Minnesota in CAIR for fine particulate matter. In this final rule, EPA is administratively staying the effectiveness of CAIR and the CAIR FIP with respect to Minnesota and sources in Minnesota only, pending further rulemaking in response to the remand.

DATES: The effective date of this final rule is December 3, 2009.

ADDRESSES: *Docket:* EPA has established a docket for this final rule under Docket ID No. EPA–HQ–OAR–2009–0021. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jeb Stenhouse, Program Development Branch, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, Washington, DC 20460, telephone number 202–343–9781, fax number 202–343–2359, and e-mail address *stenhouse.jeb@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

I. Background

Section 110(a)(2)(D)(i)(I) of the CAA requires that a state's SIP prohibit emissions by any source or other type of emissions activity in the state that will ''contribute significantly to nonattainment in, or interfere with maintenance by, any other State'' with respect to any national ambient air quality standard (NAAQS). 42 U.S.C. 7410(a)(2)(D)(i)(I). On May 12, 2005, EPA issued CAIR (70 FR 25162, May 12, 2005). In that rule, EPA found that 28 states and Washington, DC contribute significantly to nonattainment, and interfere with maintenance, of the NAAQS for fine particulate matter and/or ozone in downwind states. CAIR required these upwind states to revise their SIPs to include control measures to reduce emissions of SO_2 and/or NO_X and thereby meet the requirements of section 110(a)(2)(D)(i)(I). One of the states included in CAIR for fine particulate matter, but not for ozone, was the State of Minnesota. Minnesota was thus required to reduce annual SO_2 and annual NO_X emissions in accordance with the requirements of the rule. Further, in CAIR, EPA offered to administer, as a remedy through which states could comply with CAIR, SO_2 annual, NO_X annual, and NO_X ozone season trading programs that states could choose to incorporate in their SIPs. CAIR included model rules for these trading programs and provided that states could adopt the model rules in their SIPs and thereby incorporate the trading programs in the SIPs.

On April 28, 2006, EPA issued the CAIR FIPs (71 FR 25330, April 28 2006). In the April 28, 2006, notice, EPA promulgated FIPs to implement the emission reduction requirements of CAIR in each state covered by CAIR until the FIP is replaced by an approved SIP. EPA issued the CAIR FIPs to provide a federal backstop for CAIR. EPA decided to adopt as the FIP for

each state in the CAIR region (including Minnesota) the SIP model trading programs in CAIR, modified slightly to allow for federal, instead of state, implementation.

A number of petitioners brought legal challenges to several aspects of CAIR and of the CAIR FIPs in the U.S. Court of Appeals for the District of Columbia Circuit. Among the parties challenging the rule was Minnesota Power, an electric utility operating in Minnesota, who argued that EPA erred in the analysis of the contribution of Minnesota sources to downwind nonattainment and thus in including Minnesota in CAIR for fine particulate matter.

On July 11, 2008, in *North Carolina* v. *EPA,* 531 F.3d 896, 926–30 (DC Cir. 2008), the D.C. Circuit ruled on these challenges and vacated and remanded CAIR and the CAIR FIPs. Of particular relevance here, the Court granted Minnesota Power's petition and remanded to EPA the issue of the inclusion of Minnesota and Minnesota sources in CAIR and the CAIR FIPs because the Court concluded that EPA had failed to fully address alleged errors in its contribution analysis for Minnesota. *Id.* at 926–27. In addition, the Court granted petitions of several other parties and remanded to EPA issues concerning: EPA's interpretation of the requirement in section 110(a)(2)(D)(i)(I) that SIPs must prohibit ''interference with maintenance'' with respect to any NAAQS (*id.* at 909–11); the lawfulness of the CAIR trading programs for NO_X and SO_2 as a remedy that will assure that States abate emissions that significantly contribute to downwind nonattainment or interfere with maintenance (*id.* at 907–8); the 2015 deadline for states to remedy their failure to eliminate their significant contribution (*id.* at 911–12); the SO_2 and NO_X budgets used for the trading programs (*id.* at 916–21); and EPA's authority to terminate or limit Title IV allowances through a trading program under section 110(a)(2)(D)(i)(I) or through a requirement that, to comply with section 110(a)(2)(D)(i)(I), SIPs have Title IV allowance retirement provisions (*id.* at 921–22).

On September 24, 2008, EPA filed a petition for rehearing with the DC Circuit. This petition sought rehearing of a number of the Court's findings, but did not seek rehearing of the findings regarding Minnesota. On October 31, 2008, EPA sent a letter to Minnesota Power indicating its intent to stay the effectiveness of CAIR with respect to sources located in Minnesota until the Agency determined whether Minnesota should be included in CAIR. This letter was also submitted to the Court during briefing on the petitions for rehearing.

On December 23, 2008, the DC Circuit granted EPA's petition for rehearing only with regard to the vacatur and remanded CAIR without vacatur. This decision means that CAIR and the CAIR FIPs remain in effect while EPA develops a replacement rule consistent with the July 11, 2008, opinion.

II. What Is the Scope of This Final Rule?

In this final rule, EPA is only staying the effectiveness of CAIR and the CAIR FIPs with respect to Minnesota and sources in Minnesota. EPA intends to conduct further rulemaking in response to the Court's remand of CAIR and the CAIR FIPs. EPA intends that the stay with respect to Minnesota and Minnesota sources will remain in effect pending such further rulemaking.

EPA believes that the stay in this final rule is appropriate in light of several factors related to EPA's consideration, following the July 11, 2008 decision, of the issue concerning Minnesota's inclusion in CAIR. First, as discussed above, EPA did not seek rehearing of the Court's July 11, 2008 decision regarding the contribution analysis for Minnesota. Instead, before the Court ruled on the petitions for rehearing, EPA stated its intention to stay CAIR for Minnesota and sources in Minnesota pending a final agency determination concerning Minnesota's inclusion in CAIR. This information was presented to the Court during the rehearing process that resulted in the December 23, 2008 decision to remand CAIR without vacatur. This final rule carries out EPA's stated intent.

Second, the issue of whether Minnesota significantly contributes to nonattainment for fine particulate matter in any downwind state, contrary to one of the requirements for SIPs in section 110(a)(2)(D)(i)(I), is logically severable from the other issues (described above) that were remanded to EPA by the DC Circuit in *North Carolina.* This issue relates solely to whether EPA properly decided whether Minnesota should be covered by-CAIR for fine particulate matter. In contrast, the other remanded issues affect multiple states and relate either to another requirement in section 110(a)(2)(D)(i)(I) or to whether the specific emission reduction requirements in CAIR were proper or adequate as a remedy for each state's 110(a)(2)(D)(i)(I) problems. One of the other remanded issues concerns the Court's determination that EPA failed to give independent meaning to the requirement, in section 110(a)(2)(D)(i)(I), that states also eliminate emissions that interfere with maintenance in downwind states. *North Carolina,* 531 F.3d at 910. The remaining remanded issues concern various aspects of the remedies (e.g., the trading programs) EPA may approve in SIPs for states determined to have failed to meet the significant contribution requirement and raise complex questions about precisely what is required for each state to eliminate its significantly contributing emissions prohibited by section 110(a)(2)(D)(i)(I). The issue about Minnesota and Minnesota sources concerns the discrete question of whether EPA erred in its analysis of the contribution of Minnesota sources to downwind nonattainment areas and is logically severable from all the other remanded issues.

Third, as discussed in detail below, EPA finds that the stay with respect to Minnesota and Minnesota sources can be implemented immediately without disrupting the operation of the trading programs under CAIR and the CAIR FIPs and the allowance market. The stay is thus consistent with the Court's July 11, 2008 and the December 28, 2008 decisions leaving the CAIR and CAIR FIPs in place as promulgated while EPA develops a replacement rule. In addition, as noted above, the Court was aware of EPA's intent to stay CAIR with respect to Minnesota and Minnesota sources when it issued the December 28, 2008 decision.

Minnesota sources are currently subject to the CAIR annual SO_2 and annual NO_X trading programs, and the major issue in implementing the stay is how to treat, during the stay period, allowances that are usable in the trading programs and have already been allocated and recorded for Minnesota sources. As explained below, SO_2 and NO_X allowances must be treated differently.

In the CAIR SO_2 trading program as promulgated, sources (including those in Minnesota) are not issued new allowances but instead must use title IV allowances for compliance in the trading program.[1] Under title IV, allowances were allocated to sources, generally during 1993 in perpetuity, with each allowance authorizing in the Acid Rain Program one ton of emissions in the year for which the allowance was allocated or any year thereafter. In the CAIR SO_2 trading program, the same allowances are usable and authorize emissions in the same years, but those allowances allocated for years before

[1] While CAIR SO_2 opt-in units are allocated new CAIR SO_2 allowances, the Minnesota FIP does not allow for opt-in units.

2010 authorize one ton of emissions, those allocated for 2010 through 2014 authorize one-half ton of emissions, and those allocated for 2015 and thereafter authorize 0.35 ton of emissions. Implementation of the stay adopted in this final rule does not involve EPA making any changes in this final rule with regard to Minnesota sources' title IV allowances. Under the stay, these sources retain the title IV allowances that they currently hold (including any allocations for 2010 and thereafter that the sources have not transferred). Moreover, like any other title IV allowance that has not already been used or retired, title IV allowances allocated to Minnesota sources continue to be usable in either the Acid Rain Program or the CAIR SO_2 trading program and retain the above-described emission tonnage authorizations because those authorizations depend on the year for which the allowances were issued and the trading program in which they are used, not on whether the entity to which the allowances were allocated is subject to CAIR.

In contrast, the CAIR NO_X annual trading program provides for the issuance of new CAIR NO_X allowances and such allowances for 2009 have already been allocated for existing Minnesota sources and recorded in the sources' compliance accounts in the allowance tracking system for that program under the CAIR FIP for Minnesota. For the reasons discussed below, implementation of the stay in this final rule requires that an amount of 2009 CAIR NO_X allowances equivalent to the amount that has already been allocated and recorded for these sources be removed from the CAIR NO_X annual trading program and that no more CAIR NO_X allowances be allocated to Minnesota sources for the period that the stay is in place. However, as discussed below, EPA finds that this can be accomplished without disruption of the trading program and the allowance market.

While the stay in this final rule is in place, Minnesota sources will not need to use any of their allowance allocations to authorize their annual NO_X emissions. If those allowances that have already been recorded were not removed from the trading program and if allowances for future years continued to be allocated and recorded for Minnesota sources, the full amount of these allowances could be traded for use by non-Minnesota sources to authorize their own annual NO_X emissions. This would increase the total amount of allowances available each year for use by sources in the states that will continue to be subject to the NO_X annual trading program under CAIR or the CAIR FIPs. As a result, the total amount of CAIR NO_X allowances available each year for sources in these states would exceed the sum of the NO_X annual trading budgets under CAIR and the CAIR FIPs for these states. If this were allowed, the CAIR NO_X annual trading program would not achieve the NO_X emission reductions intended under CAIR and the CAIR FIPs and reflected in the state NO_X annual trading budgets.

EPA could have accomplished the removal from the trading program of the amount of the 2009 CAIR NO_X allowances allocated and recorded for Minnesota sources under the FIP for the CAIR NO_X annual trading program by simply requiring those sources to surrender those specific allowances. However, EPA understands that, although most of the CAIR NO_X allowances allocated and recorded for sources in Minnesota are still held in the sources' compliance accounts, at least one Minnesota source has traded some of its recorded allowance allocations.[2] Consequently, the final rule requires that each Minnesota source with a recorded allowance allocation in the CAIR NO_X annual trading program hold an amount of CAIR NO_X allowances issued for the same year as the recorded allocation (i.e., 2009) equal to the amount of the recorded allocation, regardless of whether the allowances held are the same ones that were allocated to the Minnesota source. Further, under the final rule, the Administrator will deduct, and thereby retire, these required allowance holdings, and no additional allowance allocations from the state NO_X annual trading budget for Minnesota will be recorded.

For the reasons outlined in the following paragraphs, EPA believes that this approach of requiring Minnesota sources to hold 2009 CAIR NO_X allowances equal in amount to such sources' allocations will achieve the allowance removal necessary to implement the stay without disrupting the operation of the CAIR NO_X annual trading program under CAIR and the CAIR FIPs, the allowance market, and the participation of non-Minnesota sources in the program. EPA also believes that it is reasonable that Minnesota sources be given the responsibility of holding in their compliance accounts the allowances that the Administrator needs to remove.

First, each Minnesota source with a recorded allocation for 2009 can meet this responsibility by continuing to hold its allocated 2009 CAIR NO_X allowances that it has not transferred and—to the extent necessary to replace any of its allocated 2009 CAIR NO_X allowances that have been included in the few trades of Minnesota-source-allocated allowances that have occurred—by obtaining other 2009 CAIR NO_X allowances. EPA does not believe it needs to require Minnesota sources to hold for deduction exactly the same CAIR NO_X allowances that were allocated to such sources. Because all CAIR NO_X allowances issued for a given year (here, 2009) under the CAIR NO_X annual trading program under CAIR and the CAIR FIPs are fungible, deduction of the same amount of CAIR NO_X allowances issued for 2009 has the desired effect of removing the extra allowances for 2009 whether the deducted allowances are the ones allocated to Minnesota sources or those allocated to other sources. In short, a deduction—but no reallocation—of CAIR NO_X allowances is necessary to implement the stay of the effectiveness of CAIR and the CAIR FIP rule with regard to Minnesota and Minnesota sources.

Further, this approach avoids disruption of the trading program, the allowance market, and the participation of non-Minnesota sources because no allowance transfers that have occurred will be reversed or invalidated. Any party that purchased allocated CAIR NO_X allowances from a Minnesota source will retain the ability to use, hold, or transfer those purchased allowances, and any planning, based on such purchased allowances, for compliance with the requirement to hold allowances covering emissions will not be affected.

EPA believes that it is reasonable to make Minnesota sources responsible for holding 2009 CAIR NO_X allowances for deduction in order to implement the stay. The burden of doing so will be minimal because, as discussed above, these sources have transferred, and so will have to replace, only a few of their allocated 2009 CAIR NO_X allowances and most of these sources will simply continue to hold their existing 2009 CAIR NO_X allocations. Further, these sources benefit from the stay in that they would remain subject to CAIR but for the stay. In summary, the stay can be implemented—through removal from the CAIR NO_X annual trading program of the amount of Minnesota sources' 2009 CAIR NO_X allowances—without

[2] According to EPA's allowance tracking system, a total amount of 29,875 CAIR NO_X allowances were allocated to Minnesota sources for 2009, and 68 of such allowances were sold (in a single transfer on March 7, 2008) by the recipient of the allocation to another party.

disrupting the trading program (including sources' compliance planning) or the allowance market or unreasonably burdening Minnesota and non-Minnesota sources.

EPA received several comments on the proposed rule for a stay of CAIR and the CAIR FIP for Minnesota and Minnesota sources. All of the comments supported the proposal.[3] One commenter also requested clarification of the amount of allowances for 2009 that EPA will deduct from each Minnesota source's compliance account. The amount of 2009 CAIR NO_X allowances deducted will be equal to the amount originally recorded as the allocation for 2009 for the source. As is stated explicitly in the text of this final rule, EPA will not deduct, pursuant to the final rule, any other allowances. Any source in Minnesota holding any allowances in addition to 2009 CAIR NO_X allowances in the amount of its 2009 CAIR NO_X allocation will retain such additional allowances and may hold them or transfer them at any time, as the source prefers.

Although the proposed rule set June 30, 2009, as the date on which Minnesota sources must hold these allowances for deduction, that date has passed. Instead, EPA is adopting in this final rule midnight of the date 30 days after the **Federal Register** publication date for this final rule (which EPA is also setting as the final rule's effective date) as the earliest, reasonable time and date on which to require the holding of such allowances. EPA believes that the requirement to hold such allowances as of midnight of December 3, 2009 will provide sufficient time for Minnesota sources to obtain the proper amount of CAIR NO_X allowances, particularly in light of the few trades of Minnesota-source-allocated allowances that have occurred. Moreover, EPA's preferred approach, as explained in the proposed rule, is removing these allowances from the trading program as quickly as possible. None of the commenters opposed that general approach.

[3] In addition, some commenters provided comments, along with supporting information, that Minnesota was improperly included in CAIR and that the stay should remain in effect until EPA prolmulgates a replacement rule for CAIR consistent with the Court's decisions. One commenter also attached to its comment on the proposal a copy of comments presented during the CAIR FIPs rulemaking, concerning the applicability and allowance allocation provisions in the CAIR FIP trading programs. In this rulemaking, EPA is only staying CAIR and the CAIR FIPs with respect to Minnesota and sources in Minnesota, without specifying at this time how long the stay will remain in effect, and is not taking any action regarding any other issues concerning CAIR and the CAIR FIPs. These comments thus are beyond the scope of this rule and do not require a response. EPA will respond to these comments in the context of the Agency's rulemaking in response to the remand of CAIR and the CAIR FIPs.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320(b). This action does not impose any information collection burden on any state, local, or tribal governments or the private sector and instead temporarily relieves Minnesota sources of any information collection burden under the CAIR trading programs.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any requirements on small entities and instead temporarily relieves Minnesota sources (including any small entities in Minnesota) of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action does not impose any new obligations or enforceable duties on any state, local, or tribal governments or the private sector and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not impose any new obligations or enforceable duties on any state, local, or tribal governments and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comments on the proposed action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian Tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it imposes no new requirements and instead temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not impose any new requirements and only temporarily relieves Minnesota sources of the allowance-holding and other requirements under the CAIR trading programs, except for the one-time requirement to hold allowances equal to the sources' 2009 CAIR NO_X allowance allocations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 3, 2009.

L. Judicial Review

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

Any final action related to CAIR is ''nationally applicable'' within the meaning of section 307(b)(1). Through CAIR and the CAIR FIPs, EPA interprets section 110 of the CAA, a provision that has nationwide applicability. In addition, the determination of whether a state (here, Minnesota) is covered by CAIR is based on a common core of factual findings and analyses concerning the transport of pollutants between different states. Finally, EPA has established uniform approvability criteria that would be applied to the SIP revisions submitted by all states subject to CAIR. For these reasons, the Administrator also is determining that any final action regarding CAIR is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of this final rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date the final rule is published in the **Federal Register.**

List of Subjects

40 CFR Part 51

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

40 CFR Part 52

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

Dated: October 15, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

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

■ 2. Section 51.123 is amended by adding a new paragraph (a)(3) to read as follows:

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

(a) * * *

(3) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

■ 3. Section 51.124 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

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

(a) * * *

(2) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

■ 4. Section 51.125 is amended by adding a new paragraph (a)(3) to read as follows:

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

(a) * * *

(3) Notwithstanding the other provisions of this section, such provisions are not applicable as they relate to the State of Minnesota as of December 3, 2009.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 6. Section 52.35 is amended by adding a new paragraph (e) to read as follows:

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?

* * * * *

(e) Notwithstanding paragraphs (a) and (b) of this section, such paragraphs are not applicable as they relate to sources in the State of Minnesota as of December 3, 2009, except as provided in § 52.1240(b).

■ 7. Section 52.36 is amended by adding a new paragraph (d) to read as follows:

§ 52.36 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of sulfur dioxide?

* * * * *

(d) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

■ 8. Section 52.1240 is amended by adding a new paragraph (b) to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009, except that:

(1) The owner and operator of each source referenced in such paragraph in whose compliance account any allocation of CAIR NO_X allowances was recorded under the Federal CAIR NO_X Annual Trading Program in part 97 of this chapter shall hold in that compliance account, as of midnight of December 3, 2009 and with regard to each such recorded allocation, CAIR NO_X allowances that are usable in such trading program, issued for the same year as the recorded allocation, and in the same amount as the recorded allocation. The owner and operator shall hold such allowances for the purpose of deduction by the Administrator under paragraph (b)(2) of this section.

(2) After December 3, 2009, the Administrator will deduct from the compliance account of each source in the State of Minnesota any CAIR NO_X allowances required to be held in that compliance account under paragraph (b)(1) of this section. The Administrator will not deduct, for purposes of implementing the stay, any other CAIR NO_X allowances held in that compliance account and, starting no later than December 3, 2009, will not record any allocation of CAIR NO_X allowances included in the State trading budget for Minnesota for any year.

■ 9. Section 52.1241 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.1241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(b) Notwithstanding paragraph (a) of this section, such paragraph is not applicable as it relates to sources in the State of Minnesota as of December 3, 2009.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2264; MB Docket No. 09–50; RM–11515]

FM Table of Allotments: Cut Bank, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by College Creek Media, LLC, permitee of Station KEAU(FM), Channel 274C1, Fairfield, Montana, requesting the substitution of Channel 265C1 for vacant Channel 274C1 at Cut Bank to eliminate the short-spacing between Station KEAU's authorized transmitter site and the vacant Channel 274C1 at Cut Bank. Channel 265C1 can be allotted to Cut Bank consistent with the minimum distance separation requirements of the Commission's Rules, with the imposition of a site restriction located 39.4 kilometers (24.5 miles) east of Cut Bank. The reference coordinates are 48–39–28 NL and 111–47–29 WL. The allotment of Channel 265C1 at Cut Bank is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

DATES: Effective December 7, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 09–50, adopted October 21, 2009, and released