

[FR Doc. E7-19661 Filed 10-3-07; 8:45 am]

BILLING CODE 4310-05-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2007-0835-200740(a); FRL-8475-4]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Kentucky State Implementation Plan (SIP) submitted on July 19, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006, and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Kentucky. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (FIPs) concerning sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for Kentucky. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO<sub>2</sub> and NO<sub>x</sub> and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving, Kentucky would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions.

**DATES:** This direct final rule is effective December 3, 2007 without further notice, unless EPA receives adverse comment by November 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform

the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0835, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: Lesane.Heidi@epa.gov*.
3. *Fax: (404) 562-9019*.
4. *Mail: "EPA-R04-OAR-2007-0835"*, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Heidi Lesane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2007-0835". 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's action, please contact Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Mrs. LeSane can also be reached via electronic mail at *LeSane.Heidi@epa.gov*.

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### I. What Action Is EPA Taking?

EPA is approving a revision to Kentucky's SIP, submitted on July 19, 2007. In its SIP revision, Kentucky meets CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. EPA has determined that the SIP as revised meets the applicable requirements of CAIR. As a consequence of this SIP approval, EPA will also issue a final rule to withdraw the FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for Kentucky. This action will delete and reserve 40 CFR 52.940 and 40 CFR 52.941. The withdrawal of the CAIR FIPs for Kentucky is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Kentucky. Once the SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

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

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

programs or by adopting any other control measures.

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

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season 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 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 the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain 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 additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM<sub>2.5</sub> and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

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

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

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

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

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

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the

NO<sub>x</sub> allowance allocation methodology).

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

1. Include NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> ozone season trading program;
  2. Provide for allocation of NO<sub>x</sub> annual or ozone season allowances by the State, rather than the Administrator of the EPA or the Administrator's duly authorized representative (Administrator), and using a methodology chosen by the State;
  3. Provide for State allocation of NO<sub>x</sub> annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or
  4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season trading programs under the opt-in provisions in the model rules.
- An approved CAIR full SIP revision addressing EGUs' SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

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

### A. State Budgets for Allowance Allocations

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

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

authorizes 0.50 ton of SO<sub>2</sub> emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO<sub>2</sub> emissions in the CAIR trading program.

In this action, EPA is approving Kentucky's SIP revision that adopts the budgets established for the Commonwealth in CAIR, i.e., 83,205 (2009–2014) and 69,337 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 36,109 (2009–2014) and 30,651 (2015–thereafter) tons for NO<sub>x</sub> ozone season emissions, and 188,773 (2010–2014) and 132,141 (2015–thereafter) tons for SO<sub>2</sub> emissions. Kentucky's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

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

The CAIR NO<sub>x</sub> annual and ozone-season model trading rules both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone-season model rules are similar, there are some differences. For example, the NO<sub>x</sub> annual model rule (but not the NO<sub>x</sub> ozone season model rule) 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 model rule 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 model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> SIP Call allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone-season trading program. In addition, States have the option of continuing to meet their NO<sub>x</sub> SIP Call requirement by participating in the CAIR NO<sub>x</sub> ozone season trading program and including all their NO<sub>x</sub> SIP Call trading sources in that program.

The provisions of the CAIR SO<sub>2</sub> model rule are also similar to the provisions of the NO<sub>x</sub> annual and ozone season model rules. However, the SO<sub>2</sub> model rule is coordinated with the ongoing Acid Rain SO<sub>2</sub> cap-and-trade program under CAA title IV. The SO<sub>2</sub> model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and

thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO<sub>2</sub> cap-and-trade program.

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

In the SIP revision, Kentucky chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Kentucky has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions.

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

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

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone season program only, those units in the State's NO<sub>x</sub> SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to 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.

Kentucky 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. Kentucky has committed to revising the applicability section in its CAIR NO<sub>x</sub> ozone season rule in order to clarify that, as intended by the State, units subject to its NO<sub>x</sub> SIP Call program and brought into its CAIR program through the allowed expansion of the CAIR NO<sub>x</sub> ozone season applicability provisions are to be treated as CAIR NO<sub>x</sub> ozone season units and certain definitions from 401 KAR 51:001 apply to the provisions that bring these units into the CAIR program. EPA determined after review of Kentucky's final rules, and after Kentucky had adopted other necessary revisions to its CAIR rules, that these provisions needed clarification. However, while the clarifications are needed, EPA interprets Kentucky's current rule to provide that the NO<sub>x</sub> SIP Call units are subject to the requirements for CAIR NO<sub>x</sub> ozone season units and that the NO<sub>x</sub> SIP Call definitions are used in applying the applicability provisions that bring in NO<sub>x</sub> SIP Call units. In addition, Kentucky has committed to correct two citation references in its CAIR NO<sub>x</sub> ozone season allowance allocation methodology needed in order to reference correctly its applicability section. EPA interprets Kentucky's current rule as applying the correct references.

Kentucky has also committed to revising the definitions of "commence commercial operation" and "commence operation" in its CAIR NO<sub>x</sub> ozone season rule in order to clarify the deadlines, for meeting monitoring and reporting requirements, that apply to the NO<sub>x</sub> SIP Call units that are brought into the CAIR program but do not serve generators producing electricity for sale, as intended by the State. EPA determined after review of Kentucky's final rules, and after Kentucky had adopted other necessary revisions to its CAIR rules, that these provisions needed clarification.

EPA has outlined these necessary revisions in a technical support document. EPA received a letter from Kentucky dated September 11, 2007, that provides a commitment to make these rule revisions in its CAIR rules in 2008. Specifically, in the September 11, 2007, letter, Kentucky commits to make the revisions discussed above to its CAIR NO<sub>x</sub> Ozone Season trading rule, 401 KAR 51:220.

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

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

States may establish in their SIP submissions 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.

Kentucky has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual and CAIR NO<sub>x</sub> ozone season model trading rules concerning the allocation of NO<sub>x</sub> annual and ozone season allowances with its own methodology. Kentucky has chosen to distribute 98% of its NO<sub>x</sub> annual allowances based upon adjusted heat input. In Kentucky's final CAIR SIP submittal, Kentucky already made initial allocations for the control periods spanning from 2009 to 2014. In 2009, Kentucky will submit one-year allocations for the 2015 control period, and for every control period thereafter Kentucky will continue to submit allocations six years in advance. For example, in 2010, one-year allocations will be made for the 2016 control period; in 2011, one-year allocations will be made for the 2017 control period, etc. The remaining 2% of Kentucky's allowances will be held and sold as needed by the Commonwealth of Kentucky, with the proceeds to be deposited into Kentucky's general fund.

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

The CAIR establishes a compliance supplement pool (CSP) to provide 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 projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO<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 annual NO<sub>x</sub> model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Kentucky has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of allowances from the CSP. Kentucky has chosen to distribute CSP allowances using an allocation methodology that continues to reward early reductions, but hinges on heat input data. Initially, the portion of the CSP that is available to a given source is determined by the following formula:

$$ERC_U = \frac{(BHI_U)}{BHI_T} (CSP_T)$$

Where: ERC<sub>U</sub> is the Early Reduction Credit available to the unit, BHI<sub>U</sub> is the Baseline Heat Input of the unit, BHI<sub>T</sub> is the Baseline Heat Input from all sources within Kentucky, and CSP<sub>T</sub> is 14,935 tons, the Early Reduction Credits available pursuant to 40 CFR 96.143(a).

Kentucky also makes available portions of the CSP for units that are able to demonstrate need, in a manner that is identical to 40 CFR 96.143(c). Remaining credits are then distributed on a pro rata basis, up to the total early reduction credits requested pursuant to 40 CFR 96.143(b), to those CAIR NO<sub>x</sub> units with early reduction credits that exceeded the amount of credits made available by the previous calculation.

#### F. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the

applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Kentucky has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> annual trading program, including both of the opt-in allocation methods in the model rule.

Kentucky has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> ozone season trading program, including both of the opt-in allocation methods in the model rule.

Kentucky has chosen to allow certain non-EGUs to opt into the CAIR SO<sub>2</sub> trading program, including both of the opt-in allocation methods in the model rule.

## VI. Final Action

EPA is approving Kentucky's full CAIR SIP revision submitted on July 19, 2007. Under this SIP revision, Kentucky is choosing to participate in the EPA-administered cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. The SIP revision (interpreted and clarified as discussed above) meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions, and 40 CFR 51.124(o), with regard to SO<sub>2</sub> emissions. Further, Kentucky has agreed to make the technical corrections to certain provisions as discussed above.

Therefore, EPA has determined that the SIP as revised will meet the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for Kentucky. This action will delete and reserve 40 CFR 52.940 and 40 CFR 52.941.

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 3, 2007 without further notice unless the Agency receives adverse comments by November 5, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 3, 2007 and no further action will be taken on the proposed rule.

## VII. Statutory and Executive Order Reviews

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

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects 40 CFR Part 52**

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

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

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart S—Kentucky**

■ 2. In § 52.920(c) Table 1 is amended under Chapter 51 by adding in numerical order the entries for "401 KAR 51.210," "401 KAR 51.220," and "401 KAR 51.230" to read as follows:

**§ 52.920 Identification of plan.**

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

TABLE 1.—EPA APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards</b>				
*	*	*	*	*
401 KAR 51.210 .....	CAIR NO <sub>x</sub> Annual Trading Program .....	2/2/2007	10/4/2007 [Insert citation of publication].	
401 KAR 51.220 .....	CAIR NO <sub>x</sub> Ozone Season Trading Program .....	6/13/2007	10/4/2007 [Insert citation of publication].	
401 KAR 51.230 .....	CAIR SO <sub>2</sub> Trading Program .....	2/2/2007	10/4/2007 [Insert citation of publication].	
*	*	*	*	*

[FR Doc. E7-19327 Filed 10-3-07; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

[EPA-HQ-OAR-2003-0118; FRL-8477-7]

RIN 2060-AG12

**Protection of Stratospheric Ozone: Notice 22 for Significant New Alternatives Policy Program**

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

**ACTION:** Determination of acceptability.

**SUMMARY:** This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The determinations concern new substitutes for use in the refrigeration and air conditioning sector.

**DATES:** This action is effective on October 4, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0118 (continuation of Air Docket A-91-42). All electronic documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Air Docket (No. A-91-42), EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, 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 Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sheppard by telephone at (202) 343-9163, by facsimile at (202)

343-2362, by e-mail at [sheppard.margaret@epa.gov](mailto:sheppard.margaret@epa.gov), or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 10th floor, Washington, DC 20005.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion World Wide Web site at <http://www.epa.gov/ozone/> including the SNAP portion at <http://www.epa.gov/ozone/snap/>.

**SUPPLEMENTARY INFORMATION:**

- I. Listing of New Acceptable Substitutes
  - A. Refrigeration and Air Conditioning
- II. Section 612 Program
  - A. Statutory Requirements
  - B. Regulatory History