

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2007-0886; FRL-8473-3]

Approval and Promulgation of Implementation Plans; Arkansas; Clean Air Interstate Rule Nitrogen Oxides Ozone Season Trading Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking a direct final action to approve a revision to the Arkansas State Implementation Plan (SIP) submitted on August 10, 2007, enacted at Regulation 19—Arkansas Plan of Implementation for Air Pollution Control; Chapter 14, Sections 19.1401–19.1404; and Chapter 15, Section 19.1501. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Ozone Season Trading Program, promulgated on May 12, 2005 and subsequently revised on April 28 and December 13, 2006. EPA is approving the SIP revision as fully implementing the CAIR NO_x ozone season requirements for Arkansas. Therefore, as a consequence of this SIP approval, EPA will also withdraw the CAIR Federal Implementation Plan (CAIR FIP) concerning NO_x ozone season emissions for Arkansas. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

The intended effect of this action is to reduce NO_x emissions from the State of Arkansas that are contributing to nonattainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) in downwind states. This action is being taken under section 110 of the Federal Clean Air Act (the Act or CAA).

DATES: This rule is effective on November 26, 2007 without further notice, unless EPA receives relevant adverse comment by October 26, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2007-0886, by one of the following methods:

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

(2) *E-mail*: Mr. Jeff Robinson at *robinson.jeffrey@epa.gov*. Please also cc

the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 "Contact Us" Web site*: *http://www.epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), at fax number 214-665-6762.

(5) *Mail*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

(6) *Hand or Courier Delivery*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2007-0886. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this **Federal Register** to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Arkansas Department of Environmental Quality, Air Division, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219-8913.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's action, please contact Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever any reference to "we," "us," or "our" is used, we mean EPA.

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I. What Action Is EPA Taking?

EPA is taking direct final action to approve a revision to Arkansas's SIP, submitted on August 10, 2007, enacted at Regulation 19—Arkansas Plan of Implementation for Air Pollution Control; Chapter 14, Sections 19.1401–19.1404; and Chapter 15, Section 19.1501. In its SIP revision, Arkansas would meet CAIR NO_x ozone season requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade program addressing NO_x ozone season emissions. The SIP as revised that EPA is approving meets the applicable requirements of CAIR. Our detailed analysis of this SIP revision is in the Technical Support Document (TSD) for the Arkansas CAIR NO_x Ozone Season Trading Program. The TSD is available as specified in the section of this document identified as **ADDRESSES**. As a consequence of the SIP approval, the Administrator of EPA will also issue a final rule to withdraw the FIP concerning NO_x ozone season emissions for Arkansas. This action will delete and reserve 40 CFR 52.184 in part 52. The withdrawal of the CAIR FIP for Arkansas is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIP was premised on a deficiency in the SIP for Arkansas. Once the SIP is fully approved, EPA no longer has authority for the FIP since the deficiency has been corrected. Thus, EPA will not have the option of maintaining the FIP 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 FIP.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on November 26, 2007 without further notice unless we receive relevant adverse comment by October 26, 2007. If we receive relevant adverse comments, we will publish a

timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_x for the ozone season (defined at 40 CFR 97.302 as 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. Arkansas was found to significantly contribute to nonattainment of the 8-hour ozone standard in Texas, resulting in Arkansas being subject to the NO_x ozone season CAIR requirements.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were

due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a 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 CAIR FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule (71 FR 25328). See 40 CFR 52.35 and 52.36. 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 FIPs require certain EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone season trading programs, as appropriate, found at 40 CFR part 97. The CAIR FIP SO₂, NO_x annual, and NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by 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, while the CAIR FIPs remain in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements (71 FR 25288 and 71 FR 25304, respectively). On December 13, 2006, EPA published minor, non-substantive revisions that serve to clarify the CAIR and CAIR FIP regulations (71 FR 74792).

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

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the

first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO₂ and NO_x budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. The December 13, 2006, revisions to the CAIR and CAIR FIP regulations were non-substantive and, therefore, do not affect EPA's evaluation of a State's SIP revision.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs. Arkansas was not subject to the NO_x SIP Call requirements; therefore this exception is not available to the State.

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 State's CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. The provisions in the abbreviated SIP revision, if approved into a State's SIP, will not replace that State's CAIR FIP; however, the requirements for the CAIR FIPs at 40 CFR part 52 incorporate the provisions of the Federal CAIR trading programs in 40 CFR part 97. The Federal CAIR trading programs in 40 CFR part

97 provide that whenever EPA approves an abbreviated SIP revision, the provisions in the abbreviated SIP revision will be used in place of or in conjunction with, as appropriate, the corresponding provisions in 40 CFR part 97 of the State's CAIR FIP.

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_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x Ozone Season Trading Program;
- (2) Provide for State allocation of NO_x annual or ozone season allowances using a methodology chosen by the State;
- (3) Provide for State allocation of NO_x annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or
- (4) Allow units that are not otherwise CAIR units to opt individually into the CAIR SO₂, NO_x Annual, or NO_x Ozone Season Trading Programs under the opt-in provisions in the model rules.

EPA's authority to issue the CAIR FIPs was premised on the deficiency of each State's SIP in addressing the CAIR requirements. EPA will not have the option of maintaining the CAIR FIP following approval of a full CAIR SIP revision. Therefore, an approved CAIR full SIP revision will replace the CAIR FIP requirements for NO_x annual, NO_x ozone season, or SO₂ emissions, as applicable, for that State.

V. What Is EPA's Analysis of the Arkansas CAIR NO_x Ozone Season SIP Submittal?

A. State Budget for NO_x Ozone Season Allowance Allocations

The CAIR NO_x ozone season budgets for Arkansas were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the Arkansas NO_x ozone season budgets from the regional budgets using Arkansas heat input data adjusted by fuel factors.

The CAIR SIP requirements and the Arkansas CAIR NO_x ozone season FIP establish the NO_x ozone season budgets for Arkansas as 11,515 tons of NO_x ozone season emissions for 2009–2014 and 9,596 tons of NO_x ozone season emissions in 2015 and thereafter. Arkansas's rules at 19.1402 establish that the total amount of NO_x ozone season allowances allocated per control period is as listed in 40 CFR 51.123 and 96.340; ensuring that the Arkansas allocation methodology will not allocate more allowances than the state NO_x ozone season budget, consistent with 40 CFR 51.123.

B. CAIR NO_x Ozone Season Cap-and-Trade Program

The CAIR NO_x annual and ozone season FIPs for the States largely mirror the structure of the NO_x SIP Call model-trading rule in 40 CFR part 96 subparts A through I. While the provisions of the NO_x annual and ozone season FIPs are similar, there are some differences. For example, the NO_x Annual FIPs provide for a compliance supplement pool, under which allowances may be awarded for early reductions of NO_x annual emissions.

EPA used the CAIR model trading rules as the basis for the SO₂, NO_x annual, and NO_x ozone season trading programs incorporated by reference into the States' CAIR FIPs. The CAIR FIP trading programs' rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading programs are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

In the August 10, 2007, SIP revision, Arkansas chose to implement its CAIR NO_x ozone season budgets by requiring EGUs to participate in the EPA-administered cap-and-trade program for NO_x ozone season emissions. Arkansas has adopted a full SIP revision that incorporates by reference the CAIR model cap-and-trade rule for NO_x ozone season emissions as published at 40 CFR part 96, subparts AAAA–HHHH on May 12, 2005, and further revised on April 28 and December 13, 2006. This SIP revision does not include subpart III, CAIR NO_x Ozone Season Opt-in Units, and any references to opt-in units. This SIP revision provides an allowance allocation methodology that replaces 40 CFR part 96, subpart EEEE.

C. Applicability Provisions for Non-EGU NO_x SIP Call Sources

In general, the CAIR FIPs' 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. Because Arkansas was not included in the NO_x SIP Call trading program, Arkansas does not have or need the option of expanding the applicability provisions of the CAIR NO_x Ozone Season Trading Program to include non-EGU NO_x SIP Call sources.

D. NO_x Ozone Season Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP NO_x ozone season trading programs, NO_x 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 NO_x ozone season trading program 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 provisions provide States with the flexibility to establish a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in a State if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, States have flexibility with regard to:

- (1) The cost to recipients of the allowances, which may be distributed for free or auctioned;
- (2) The frequency of allocations;
- (3) The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
- (4) The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to States in their CAIR FIP provisions, Arkansas has chosen to replace the provisions of the Arkansas CAIR NO_x Ozone Season FIP concerning the allocation of NO_x ozone season allowances with its own methodology.

To address the concerns of interstate transport, the ADEQ initiated a stakeholder process to work with affected industry and EPA Region 6. As a result of the stakeholder process, ADEQ submitted a full CAIR NO_x Ozone Season SIP revision on August 10, 2007. Section 19.1401 incorporates by reference 40 CFR part 96, subparts AAAA–HHHH, with the exception of EEEE, as promulgated by EPA on May 12, 2005, and further revised on April 28 and December 13, 2006. Additionally, section 19.1401 states that Subpart III and all references to opt-in units are not incorporated into the Arkansas SIP. Sections 19.1402–19.1404 of the Arkansas CAIR NO_x Ozone Season Trading Program SIP revision establish the NO_x ozone season allowance allocation methodology that is to be used in place of 40 CFR part 96, subpart EEEE.

Section 19.1402 establishes that the Arkansas NO_x Ozone Season budget is 11,515 tons per control period from 2009–2014 and 9,596 tons per control period starting with the 2015 control period. These budgets are as listed in 40 CFR 51.123(q)(2) (11,515 tons in 2009–2014 and 9,596 tons in 2015 and thereafter); ensuring that the Arkansas allocation methodology will not allocate more allowances than the state NO_x ozone season budget.

Section 19.1403 establishes the dates by which the ADEQ must submit NO_x ozone season allocations to EPA for recordation in CAIR compliance accounts. Section 19.1403 is divided further based on unit operating history; 19.1403(A) provides the allowance allocation timing for the EGUs with a baseline gross electric generation as defined in 19.1404(A), and 19.1403(B) provides the allowance allocation timing for the EGUs without a baseline gross electric generation. No later than April 30, 2007, the ADEQ will determine and submit to the EPA the CAIR NO_x ozone season allowances for the control periods 2009, 2010, and 2011, for EGUs with a baseline gross electric generation. Additionally for the EGUs with a baseline gross electric generation, the ADEQ will determine and submit to the EPA the CAIR NO_x ozone season allowances by October 31, 2008, for the year 2012, and by October 31 of each year thereafter for the 4th year after the notification deadline. For EGUs without a baseline gross electric generation, the ADEQ will determine and submit to EPA the NO_x ozone season allowance allocations by July 31 of the year for which the allowances are allocated.

Baseline gross electric generation is determined in accordance with section 19.1404(A) for CAIR units that have operated each calendar year during a period of five or more calendar years. The baseline gross electric generation is the average of the three highest amounts of a CAIR unit's control period gross electrical output over the five years immediately preceding the year in which allocations are due to EPA. If a generator is served by two or more units, the gross electrical output of the generator will be apportioned to each unit based on the unit's share of the total control period heat input for that year.

The ADEQ submitted a letter to the EPA dated June 7, 2007, to further explain section 19.1404(A). Once a unit has operated for five or more calendar years before the allocation submittal deadline and had a calculable baseline gross electric generation, the unit cannot be considered a non-baseline unit in the future. For example, if a unit operated from 2000–2006, the unit would have a calculable baseline gross electric generation used for the 2007, 2008, and 2009 control period allocations. If the unit shutdown or suspended operations for 2007 and started operating again in 2008, the unit would still be considered a baseline unit. The year 2007 would have zero electric output recorded in the baseline calculation.

Section 19.1404(C) establishes the allocation methodology for CAIR units with a baseline gross electric generation as calculated pursuant to section 19.1404(A). For each control period, the ADEQ will allocate to all units with a calculable baseline a total amount of allowances equal to 95% of the total ozone season budget established in 19.1402. These units will receive allowances proportional to their share of the total baseline gross electric generation for all such units; i.e., the ratio of the unit's baseline gross electric generation to the total baseline gross electric generation multiplied by the total amount of allowances allocated each control period to units with baseline data.

Section 19.1404(D) establishes the allocation methodology for CAIR units without a calculable baseline. For these units, the ADEQ will establish a new unit set-aside for each control period equal to 5% of the total ozone season budget in section 19.1402. Starting with the later of the 2009 control period or the first control period after the control period in which the CAIR unit commences commercial operation, the Designated Representative for the non-baseline units may submit a request to the ADEQ for the set-aside allowances.

This request must be submitted to the ADEQ no later than January 1st of the first control period in which the new unit set-aside allowances are requested and after the date in which the new unit commences commercial operation. The request for allowances may not exceed the unit's total tons of NO_x emissions during the previous control period.

On or after February 1st of each control period, the ADEQ will determine the total amount of new unit set-aside allowances requested. If the total amount of allowances requested is less than the total new unit set-aside pool (5% of the overall state budget) the ADEQ will allocate the new unit set-aside allowances as requested to each unit. If the total amount of requested allowances is greater than the total new unit set-aside pool, the ADEQ will determine the allocations by multiplying the ratio of each unit's requested number of allowances to the total amount of requested allowances by the new unit set-aside amount. The ADEQ will then notify each unit's Designated Representative of the amount of new unit set-aside allowances the unit will receive.

If there are allowances remaining in the new unit set-aside after the non-baseline units receive their allocations, the ADEQ will allocate these remaining allowances to units with baseline gross electric generation. The ADEQ will multiply the remaining number of allowances by the ratio of the baseline unit's allocation for that control period to the total amount of allowances allocated to the baseline units (95% of the overall state budget in section 19.1402).

Section 19.1501 establishes the effective date of the revision to Regulation 19, Chapter 14, Sections 19.1401–19.1404 as ten days after filing with the Arkansas Secretary of State, the Arkansas State Library, and the Arkansas Bureau of Legislative Research.

E. Individual Opt-In Units

The opt-in provisions of the CAIR 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 reporting 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 that 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.

Arkansas has chosen not to allow non-EGUs to opt into the CAIR NO_x Ozone Season Trading Program. Arkansas incorporated by reference the CAIR NO_x Ozone Season Trading Program, published at 40 CFR part 96, subparts AAAA–HHHH on May 12, 2005, and further revised on April 28 and December 13, 2006. This SIP revision does not include subpart III, CAIR NO_x Ozone Season Opt-in Units, and any references to opt-in units.

VI. Final Action

We are approving Arkansas's CAIR NO_x Ozone Season Trading Program SIP revision submitted on August 10, 2007, enacted at Regulation 19—Arkansas Plan of Implementation for Air Pollution Control; Chapter 14, Sections 19.1401–19.1404; and Chapter 15, Section 19.1501. Under this SIP revision, Arkansas is choosing to participate in the EPA-administered cap-and-trade program for NO_x ozone season emissions. Our technical analysis has shown that this SIP revision is consistent with the requirements of 40 CFR Part 51, including the specific CAIR NO_x ozone season requirements at 40 CFR 51.123 as published on May 12, 2005, and further revised on April 28 and December 13, 2006; and all applicable requirements of the CAA.

As a consequence of this 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 FIP concerning NO_x ozone season emissions for Arkansas. This action will delete and reserve 40 CFR 52.184 in part 52.

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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 between the Federal Government and Indian tribes, as specified by 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 Act. The EPA interprets Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (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 rule is not subject to

Executive Order 13045 because it approves a state rule implementing a Federal standard. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 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 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 November 26, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

■ 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 E—Arkansas

■ 2. Section 52.170 is amended as follows:

■ a. In paragraph (c) the table entitled "EPA-Approved Regulations in the Arkansas SIP" is amended under Regulation No. 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control, by removing the existing entries for "Chapter 14—Effective Date" and "Reg. 19.1401" and adding in its place new entries for "Chapter 14—CAIR NO_x Ozone Season Trading Program General Provisions" and new sub-entries for "Reg. 19.1401", "Reg. 19.1402", "Reg. 19.1403", and "Reg. 19.1404".

■ b. In paragraph (c) the table entitled "EPA-Approved Regulations in the Arkansas SIP" is amended under Regulation No. 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control, by adding in numerical order a new entry for "Chapter 15—Effective Date" and a new sub-entry for "Reg. 19.1501".

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submission/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations the Arkansas Plan of Implementation for Air Pollution Control				
* * * * *				
Chapter 14—CAIR NO_x Ozone Season Trading Program General Provisions				
* * * * *				
Reg. 19.1401	Adoption of Regulations	07/15/2007	09/26/2007	[Insert <i>FR</i> page number where document begins].
Reg. 19.1402	State Trading Budget	07/15/2007	09/26/2007	[Insert <i>FR</i> page number where document begins].
Reg. 19.1403	Timing Requirements for CAIR NO _x Ozone Season Allowance Allocations.	07/15/2007	09/26/2007	[Insert <i>FR</i> page number where document begins].
Reg. 19.1404	CAIR NO _x Ozone Season Allowance Allocations.	07/15/2007	09/26/2007	[Insert <i>FR</i> page number where document begins].

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Chapter 15—Effective Date				
Reg. 19.1501	Effective Date	07/15/2007	09/26/2007 [Insert FR page number where document begins].	
*	*	*	*	*

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 [FR Doc. E7-18966 Filed 9-25-07; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[EPA-R07-OAR-2007-0926; FRL-8471-9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Missouri State Implementation Plan (SIP) that will fulfill the condition of a previously-published approval (July 11, 2006). The revision amends the Construction Permits By Rule and requires a preconstruction review period before sources may begin construction.

DATES: This direct final rule will be effective November 26, 2007, without further notice, unless EPA receives adverse comment by October 26, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-0926, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *E-mail: Algoe-Eakin.amy@epa.gov*.
3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901

North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2007-0926. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office’s official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551-7942, or by e-mail at *Algoe-Eakin.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is being addressed in this document? Have the requirements for approval of a SIP revision been met?
- What action is EPA taking?

What is a SIP?
 Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information