

not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. See § 26.2642–6 and paragraph (b) of this section regarding the treatment, for purposes of chapter 13, of separate trusts resulting from the actual severance of a single trust.

\* \* \* \* \*

(iii) *Mandatory severances.* For purposes of this section, if the governing instrument of a trust requires the division or severance of a single trust into separate trusts upon the future occurrence of a particular event not within the discretion of the trustee or any other person, and if the trusts resulting from such a division or severance are recognized as separate trusts under applicable state law, then each resulting trust is treated as a separate trust for purposes of chapter 13. For this purpose, the rules of paragraph (b)(1)(ii)(C) of this section apply with respect to the severance and funding of the trusts. Similarly, if the governing instrument requires the division of a single trust into separate shares under the circumstances described in this paragraph, each such resulting share is treated as a separate trust for purposes of chapter 13. The post-severance treatment of the resulting trusts or shares as separate trusts for GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting trust or share, with no GST tax impact on any other trust or share resulting from that severance. The treatment of a single trust as separate trusts under this paragraph (a)(1), however, does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. Each separate share and each trust resulting from a mandatory division or severance described in this paragraph will have the same inclusion ratio immediately after the severance as that of the original

trust immediately before the division or severance.

\* \* \* \* \*

(5) \* \* \*

*Example 8. Subsequent mandatory division into separate trusts.* T creates an irrevocable trust that provides the trustee with the discretionary power to distribute income or corpus to T's children and grandchildren. The trust provides that, when T's youngest child reaches age 21, the trust will be divided into separate shares, one share for each child of T. The income from a respective child's share will be paid to the child during the child's life, with the remainder passing on the child's death to such child's children (grandchildren of T). The separate shares that come into existence when the youngest child reaches age 21 will be recognized as of that date as separate trusts for purposes of Chapter 13. Any allocation of GST tax exemption to the trust after T's youngest child reaches age 21 may be made to any one or more of the separate shares. The result would be the same if the trust instrument provided that the trust was to be divided into separate trusts when T's youngest child reached age 21, provided that the severance and funding of the separate trusts meets the requirements of this section.

\* \* \* \* \*

**Linda E. Stiff,**  
*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. E7–14850 Filed 8–1–07; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2007–0360–200717; FRL–8449–2]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Florida State Implementation Plan (SIP) submitted on March 16, 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 is proposing to determine that the SIP revision fully implements the CAIR requirements for Florida. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for Florida. 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 nonattainment of, and interfere with maintenance of, the national ambient air quality standards (NAAQS) 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 proposing to approve, Florida 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:** Comments must be received on or before September 4, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0360 by one of the following methods:

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

2. *E-mail:* [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

3. *Fax:* 404–562–9019.

4. *Mail:* “EPA–R04–OAR–2007–0360,” 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:* Stacy Harder, 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 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. “EPA–R04–OAR–2007–0360.” 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 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 <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 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 this proposal, please contact Ms. Stacy Harder, 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) 562-9042.

Ms. Harder can also be reached via electronic mail at [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

EPA is proposing to approve a revision to Florida's SIP, submitted on March 16, 2007. In its SIP revision, Florida would meet 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 is proposing to determine that the SIP, as revised, will meet the applicable requirements of CAIR. Any final action approving the SIP will be taken by the Regional Administrator for Region 4. As a consequence of the SIP approval, the Administrator of 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 Florida. This action will delete and reserve 40 CFR 52.540 and 40 CFR 52.541. The withdrawal of the CAIR FIPs for Florida 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 Florida. 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 NAAQS for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO<sub>2</sub> and annual State-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO<sub>x</sub> for the ozone season (May 1st to September 30th). Under CAIR, States may implement these 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, three years after the promulgation of the 8-hour ozone and PM<sub>2.5</sub> NAAQS. These findings started a two-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 State allocation of NO<sub>x</sub> annual or ozone season allowances 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 Florida'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 0.5 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 proposing approval of Florida's SIP revision that adopts the budgets established for the State in CAIR, i.e., 99,445 (2009–2014) and 82,871 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 47,912 (2009–2014) and 39,926 (2015–thereafter) tons for NO<sub>x</sub> ozone season emissions, and 253,450 (2010–2014) and 177,415 (2015–thereafter) tons for SO<sub>2</sub> emissions. Florida'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.

Florida has committed to revising the definitions of "permitting authority" and "State" in its CAIR rules in order to ensure that allowances issued by all States with approved rules providing for participation in the respective EPA-administered cap-and-trade programs are fungible and can be traded and used by all sources in all these States, as intended. EPA discovered after review of other States' rules, but after Florida had adopted its CAIR rules, that there was an issue related to these definitions when they are revised to refer only to a specific State.

In Florida's rules for CAIR, the EPA model trading rules were revised to limit all references to "permitting authority" to refer to the Florida

Department of Environmental Protection. Similarly, references to "State" were limited to refer to Florida. These changes are acceptable in most, but not all, instances under the current model rules. In certain definitions in the model rules incorporated by Florida (i.e., "allocate" or "allocation," "CAIR NO<sub>x</sub> allowance," "CAIR SO<sub>2</sub> allowance," and "CAIR NO<sub>x</sub> Ozone Season allowance"), it is important that the term "permitting authority" cover permitting authorities in all States that choose to participate in the respective EPA-administered trading programs and that the term "State" cover all such States. This is necessary to ensure that all allowances issued in each EPA-administered trading program are fungible and can be traded and used for compliance with the allowance-holding requirement in any State in the program.

On May 24, 2007, EPA participated in a teleconference with Florida and outlined necessary definition revisions. EPA received a letter from Florida dated June 22, 2007, and a supplemental electronic mail submission on July 11, 2007, that provide a commitment to make these rule revisions in its CAIR rules in early 2008. Specifically, in the June 22, 2007, letter and supplemental submission on July 11, 2007, Florida commits to revising section 62–296.470(1) of Florida's rule to state that: the limitation of the "permitting authority" definition only to Florida does not apply when this term is used in the definitions of "allocate" or "allocation," "CAIR NO<sub>x</sub> allowance," "CAIR SO<sub>2</sub> allowance," and "CAIR NO<sub>x</sub> Ozone Season allowance;" and the limitation of the "State" definition only to Florida does not apply when the term is used in the definitions of "CAIR NO<sub>x</sub> allowance," "CAIR SO<sub>2</sub> allowance," and "CAIR NO<sub>x</sub> Ozone Season allowance."

#### 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 0.5 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, Florida 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. Florida 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 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.

Because Florida was not included in the NO<sub>x</sub> SIP Call trading program, Florida did not have an option of expanding the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program.

#### 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.

Florida has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. Florida has chosen to distribute NO<sub>x</sub> annual allowances based upon a methodology that is similar, but not identical, to that in the CAIR model trading rule for existing and new units. Under Florida's rule and the CAIR model rule, existing units are allocated NO<sub>x</sub> allowances in proportion to their "fuel-adjusted control period heat input" during the baseline period. However, in addition to the fuel adjustment factors used to calculate adjusted heat input in the CAIR model rule, Florida has also developed a separate 150% fuel factor for existing biomass-fired units that use best available control technology (BACT). Further, in Florida's rule, as in the CAIR model rule, new units are allocated NO<sub>x</sub> allowances in proportion to their "converted control period heat input." However, unlike the CAIR model rule, Florida's rule categorizes new units as those commencing operation on or after January 1, 2007, (rather than January 1, 2001), and establishes a new unit set set-aside of five percent for all control years (rather than five percent through 2014 and three percent thereafter). Moreover, under Florida's rule, allocations are scheduled to be made in 2006, 2009, and every three years thereafter, with three-year blocks of allocations being made generally four years in advance. Florida's rule also limits the number of years for which permanently retired units are allocated allowances after retirement.

Florida has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone season model trading rule concerning allowance allocations with its own methodology. Florida has chosen to distribute NO<sub>x</sub> ozone season allowances based upon the same allowance allocation methodology described above for NO<sub>x</sub> annual allowances.

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

The CAIR rule establishes a 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.

Florida has not chosen to modify the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of allowances from the CSP. Florida has chosen to distribute CSP allowances using an allocation methodology that is the same as EPA's model rule. The CSP is an additional 8,335 annual NO<sub>x</sub> allowances given to the State for 2009, and there is no CSP for ozone-season allowances.

#### *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.

Florida has chosen not to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> annual trading program.

Florida has chosen not to allow non-EGUs meeting certain requirements to opt into the CAIR NO<sub>x</sub> ozone season trading program.

Florida has chosen not to allow certain non-EGUs to opt into the CAIR SO<sub>2</sub> trading program.

#### **VI. Proposed Actions**

EPA is proposing to approve Florida's full CAIR SIP revision submitted on March 16, 2007. Under this SIP revision, Florida 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 (revised 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, Florida has agreed to make the technical corrections to certain definitions as discussed above. Therefore, EPA is proposing to determine 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, NO<sub>x</sub> ozone season emissions for Florida. This action will delete and reserve 40 CFR 52.540 and 40 CFR 52.541.

#### **VII. Statutory and Executive Order Reviews**

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

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

This proposal also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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 proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: July 25, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-14981 Filed 8-1-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2007-0251-200719; FRL-8449-3]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Georgia State Implementation Plan (SIP) submitted on March 28, 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 is proposing to determine that the SIP revision fully implements the CAIR requirements for Georgia. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) annual emissions for Georgia. 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 nonattainment of, and interfere with maintenance of, the national ambient air quality standards (NAAQS) 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 proposing to approve, Georgia would meet CAIR requirements by participating in the EPA-administered cap-and-trade

programs addressing SO<sub>2</sub> and NO<sub>x</sub> annual emissions.

**DATES:** Comments must be received on or before September 4, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0251, by one of the following methods:

1. <http://www.regulations.gov>: Follow the online instructions for submitting comments.

2. *E-mail:* [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

3. *Fax:* 404-562-9019.

4. *Mail:* "EPA-R04-OAR-2007-0251," 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:* Stacy Harder, 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 a.m. to 4:30 p.m., excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2007-0251." 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> website 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