

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is scheduled. Passage of vessels through the danger zone when weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCBH Kaneohe Bay military personnel utilizing a bull-horn from a Marine helicopter, hailing the vessel via VHF channel 16 or U.S. Navy surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The Enforcing Agency.* The foregoing regulations shall be enforced by the Commanding General, MCBH Kaneohe Bay and such agencies as he/she may designate.

Dated: August 23, 2007.

**Mark F. Sudol,**

*Acting Chief, Operations, Directorate of Civil Works.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2007-0399; FRL-8462-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Connecticut; State Implementation Plan Revision To Implement the Clean Air Interstate Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Connecticut State Implementation Plan (SIP) submitted on

April 26, 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 Connecticut. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plan (CAIR FIP) concerning NO<sub>x</sub> ozone-season emissions for Connecticut. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

**DATES:** Comments must be received on or before October 1, 2007.

**ADDRESSES:** Submit your comments, identified by FDMS Docket ID No. EPA-R01-OAR-2007-0399, by one of the following methods:

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

2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax:* (617) 918-0047.

4. *Mail:* "FDMS Docket ID No. EPA-R01-OAR-2007-0399", Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. 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. "FDMS Docket ID No. EPA-R01-OAR-2007-0399". 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. In addition to publicly available docket materials available electronically in <http://www.regulations.gov>, the hard copy of these materials, including the state submittal, is available at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. 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 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's proposal, please contact Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, telephone number (617) 918-1684, fax number (617) 918-0684, e-mail [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

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

EPA is proposing to approve a revision to Connecticut's SIP, submitted on April 26, 2007. This SIP revision includes a new regulation, Regulations of Connecticut State Agencies (RCSA) section 22a-174-22c, "The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO<sub>x</sub>) Ozone Season Trading Program" (herein called "Connecticut's proposed CAIR program"), repeal of RCSA section 22a-174-22a ("The Connecticut NO<sub>x</sub> Budget Program"), as of May 1, 2009, and repeal of RCSA section 22a-174-22b, "The Connecticut Post-2002 NO<sub>x</sub> Budget Program" (herein called the "Connecticut NO<sub>x</sub> SIP Call trading program"), as of May 1, 2010. In its SIP revision, Connecticut would meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade program addressing NO<sub>x</sub> ozone-season emissions. EPA is proposing to determine that the Connecticut 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 1. As a consequence of the SIP Approval, the Administrator of EPA will also issue a final rule to withdraw the FIP concerning NO<sub>x</sub> ozone-season emissions for Connecticut. This action will delete and reserve 40 CFR 52.386. The withdrawal of the CAIR FIP for Connecticut 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 Connecticut. Once the SIP is fully approved, EPA no longer has authority for the FIP. 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.

The Connecticut Department of Environmental Protection (DEP) has requested that EPA "parallel process" Connecticut's proposed CAIR SIP revision. Under this procedure, EPA prepared this action before the State's final adoption of the regulations included in the SIP revision. The DEP held a public hearing on its proposed CAIR SIP revision on October 19, 2006. The DEP has prepared a response to the comments received on its proposal and has developed a "post-hearing final draft" version of the regulations dated April 10, 2007. This is the version of the regulations included in Connecticut's April 26, 2007 SIP submittal to EPA and the subject of EPA's proposal.

On June 19, 2007, the Connecticut DEP received adverse comments regarding the allocation methodology in its proposed CAIR program. Consequently, the DEP may revise its proposed regulations before final promulgation. After the DEP submits its final adopted regulations, EPA will review these final regulations to determine whether they differ from the "post-hearing final draft" version that is the subject of this proposal. If Connecticut's final regulations do in fact differ from the "post-hearing final draft" version, then EPA would need to determine whether any of the changes are significant. Ordinarily, changes that are limited to the allocation methodology would not be deemed significant for SIP approval purposes, assuming the methodology does not lead to allocations in excess of the total state budget. Based on EPA's determination regarding the significance of any changes in the final regulations, EPA would then decide whether it is appropriate to prepare a final rule and describe the changes in the final rulemaking action, or re-propose action based on the state's final adopted regulations.

### II. What Is the Regulatory History of the 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<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 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 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 units 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 Connecticut'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 of the CAIR program (2009–2014) and by 0.125 lb/mmBtu, for phase 2 of the CAIR program (2015 and thereafter) 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. Connecticut, however, is only required to participate in the CAIR NO<sub>x</sub> ozone season program and not the CAIR NO<sub>x</sub> annual or SO<sub>2</sub> trading programs. Therefore, only CAIR NO<sub>x</sub> ozone-season budgets apply to the Connecticut CAIR program.

In today's action, EPA is proposing approval of Connecticut's SIP revision, which will be codified at RCSA section 22a–174–22c. This SIP revision adopts the budget established for the State in CAIR, i.e., 2,559 tons of NO<sub>x</sub> ozone-season emissions for CAIR phases 1 and 2, plus an additional 132 tons of NO<sub>x</sub> ozone-season emissions for both phases 1 and 2 to account for NO<sub>x</sub> emissions from "non-EGUs" from the Connecticut NO<sub>x</sub> SIP Call trading program (see section V.B. below). The total NO<sub>x</sub> ozone-season budget is therefore 2,691 tons of NO<sub>x</sub> ozone-season emissions for CAIR phases 1 and 2. Connecticut's SIP revision sets this budget as the total number of allowances (with each allowance authorizing one ton of NO<sub>x</sub> ozone-season emissions) available for allocation for each year under the EPA-administered CAIR cap-and-trade program.

#### 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> 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. Connecticut has decided to exercise the option of including all its NO<sub>x</sub> SIP Call units in its State CAIR program. Therefore, the Connecticut CAIR SIP revision includes amendments to the Connecticut NO<sub>x</sub> SIP Call trading

program (RCSA section 22a–174–22b) such that the NO<sub>x</sub> SIP Call trading program applies for the control periods from 2003 through 2008, but is then superseded by the Connecticut CAIR program beginning with the control period in 2009.

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, Connecticut proposes to implement its CAIR budgets by requiring EGUs (as well as “non-EGUs” from its NO<sub>x</sub> SIP Call trading program, as discussed below) to participate in EPA-administered cap-and-trade programs for NO<sub>x</sub> ozone-season emissions. Connecticut is proposing a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for 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 (herein called “non-EGUs”). 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.

In the SIP revision, Connecticut proposes to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all units in the State’s NO<sub>x</sub> SIP Call trading program, plus Exeter Energy, which is a waste-tire-fired unit that EPA has determined meets the definition of a NO<sub>x</sub> SIP Call unit and a CAIR unit. Units in the Connecticut NO<sub>x</sub> SIP Call trading program include EGUs of 15 MW or more and non-EGUs (such as industrial boilers and combustion turbines) with a maximum design heat input of 250 MMBtu/hr or more. These units will be included in the Connecticut CAIR program beginning with the control period in 2009.

EPA has determined that Connecticut’s proposed SIP revision includes the allowable CAIR applicability provisions relating to adding all NO<sub>x</sub> SIP Call trading-program units to the Connecticut CAIR NO<sub>x</sub> ozone season program.

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

*Deadlines:* There is one technical flaw in the SIP revision, but EPA is proposing to approve the SIP revision despite this flaw. CAIR requires states to submit to EPA the initial allocations for EGUs that started operation before 2001 by October 31, 2006. Connecticut’s proposed SIP revision does not meet this requirement, nor did the state in fact submit those allocations by this date. However, the purpose of this date was to allow EPA sufficient time to process the allocations data. EPA now has the allocations, and no outside party was prejudiced by Connecticut’s failure to meet this date.

Specifically, according to 40 CFR 51.123(aa)(2)(iii)(C), for a full SIP revision, “[t]he State’s methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit’s allocation of CAIR NO<sub>x</sub> allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011.” Connecticut’s proposed SIP revision does not meet this requirement because it does not require that the State submit the 2009–2011 allocations for pre-2001 EGUs by October 31, 2006. Instead, Connecticut’s SIP revision requires that it submit, and in fact it did submit, these allocations by April 30, 2007, the deadline that is applicable to abbreviated SIP revisions under 40 CFR 51.123(ee)(2)(ii)(C).

Since Connecticut has submitted a full SIP revision, not an abbreviated SIP revision, this failure to require that the State will submit allocations by October 31, 2006 is technically a deficiency in the SIP. However, this does not render

the SIP unapprovable. The purpose of the October 31, 2006 deadline, as mentioned above, was to allow EPA’s Clean Air Markets Division sufficient time to process the allocations. At this point, the deadline has elapsed; Connecticut has, in fact, submitted its allocations; and the Clean Air Markets Division is fully able to process the allocations despite having received them later than CAIR envisions. Potentially regulated entities received ample notice of Connecticut’s plan for allocations when the State’s program was submitted for public comment on the state level. Furthermore, in the context of this action, it makes no difference whether EPA would have received the 2009–2011 allocations in April of this year or October of last year, since EPA has, in fact, received them well before the date of this document. No party is prejudiced by the deficiency, since the deadline has passed, and any interested party has a full opportunity to comment on any aspect of this proposed action. Moreover, with Connecticut’s April 2007 submission of the allocations, EPA will still be able—after final approval of the SIP revision—to record them in 2007 and, thereby, provide the allowances to owners and operators sufficiently in advance of the 2009–2011 control periods. In sum, EPA has determined that the interests of the public, potentially regulated entities, and EPA itself, including those interests which 40 CFR 51.123(aa)(2)(iii)(C) sought to protect, have been adequately met by the proposed SIP revision’s adoption and, more importantly, actual submission of 2009–2011 allocation data by April 30, 2007. Consequently, EPA proposes to approve this SIP revision despite Connecticut’s failure to meet the requirements of 40 CFR 51.123(aa)(2)(iii)(C).

*NO<sub>x</sub> allowance-allocation methodology:* 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 (i.e., “existing units”), 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.

In the SIP revision, Connecticut proposes to replace the provisions of the CAIR NO<sub>x</sub> ozone-season model trading rule concerning allowance allocations with its own methodology. For most fossil-fuel-fired units, Connecticut proposes to allocate NO<sub>x</sub> ozone-season allowances largely based on electric and thermal output, rather than heat input. For cogeneration units, certain industrial boilers or indirect heat exchangers, and waste-tire-fired units, Connecticut proposes to allocate allowances based on the unit's actual or permitted NO<sub>x</sub> emission rate. Connecticut also provides a percentage of allowances for an energy efficiency/renewable energy set-aside and a new unit set-aside.

#### (1) What Types of Set-Asides Are Included in Connecticut CAIR?

In the SIP revision, Connecticut proposes to include in its CAIR program both an energy efficiency/renewable energy set-aside (EERESA) to encourage Energy Efficiency Projects (EEPs), Renewable Energy Projects (REPs), and Qualifying Other Project (QOPs), and a new unit set-aside to allow for addition of new units.

Connecticut defines a new unit as any fossil-fuel-fired unit that began operating on or after January 1, 2006 and that serves a generator that produces electricity at an output of 15 MWe or more. A unit is considered to be a new unit for 6 ozone-season control periods (or portion thereof) following the date of initial operation. This change in status means that a Connecticut CAIR "new unit" will then become a Connecticut CAIR "existing unit."

Connecticut proposes to establish a new unit set-aside at 7 percent of the State's CAIR budget during CAIR phase 1 (2009–2014), and at 5 percent of the State's CAIR budget during CAIR phase 2 (2015 and thereafter). Therefore, the new unit set-aside would include 200

CAIR NO<sub>x</sub> ozone-season allowances during CAIR phase 1, and 134 allowances during CAIR phase 2.

Connecticut proposes to establish an EERESA at 10 percent of the State's CAIR budget for both phases of the CAIR program. Therefore, the EERESA would include 268 CAIR NO<sub>x</sub> allowances for the 2009 and subsequent ozone-season control periods.

#### (2) Methodology for Allocating CAIR Allowances

Connecticut is proposing to replace the provisions of the CAIR NO<sub>x</sub> ozone-season model trading rule concerning allowance allocations with a largely output-based methodology. Under Connecticut's proposed SIP revision, most fossil-fuel-fired units would receive allocations based on their average net electricity output, without adjustments for fuel type. For cogeneration, industrial, and waste-tire-fired units, Connecticut proposes to allocate allowances based on the units' actual or permitted NO<sub>x</sub> emission rates and average heat input.

EPA has identified two potential ambiguities in the allocation provisions of Connecticut's proposed CAIR program, and asked the Connecticut DEP for its interpretations. The Connecticut DEP (Wendy Jacobs, Bureau of Air Management) responded by electronic mail on June 20, 2007. After reviewing the Connecticut DEP's interpretations as stated in that electronic mail message, EPA interprets the provisions involved as follows.

First, the proposed regulation uses the term "NO<sub>x</sub> allowance" in three places. See RCSA sections 22a–174–22c(c)(2), 22a–174–22c(c)(3)(B), 22a–174–22c(g)(4). However, this term is defined neither in the proposed SIP revision nor in the CAIR model rule. According to the Connecticut DEP, the term "NO<sub>x</sub> allowance" when used in RCSA section 22a–174–22c is identical to the term "CAIR NO<sub>x</sub> Ozone Season allowance" as defined at 40 CFR 96.302. EPA adopts this interpretation.

Second, under RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A), there is no limit to the number of allowances that can be allocated to cogeneration units, industrial units, waste-tire-fired units, or Phase I units in any control period. In theory, these provisions could operate to allocate more allowances to cogeneration units, industrial units, waste-tire-fired units, or Phase I units than are available in Connecticut's CAIR NO<sub>x</sub> ozone-season budget. That said, RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3), which authorize the Connecticut DEP to allocate CAIR NO<sub>x</sub>

ozone season allowances, state the maximum number of allowances available for allocation for all units other than new units.

According to the Connecticut DEP, RCSA sections 22a–174–22c(e)(7)(A) and 22a–174–22c(e)(8)(A) are modeled after analogous provisions in the Connecticut NO<sub>x</sub> Budget Program and the Connecticut NO<sub>x</sub> SIP Call trading program, and under those programs, the allocations for cogeneration units and industrial units have never resulted in a shortage of allowances for units in other categories. The DEP suggests that if the data support allocating allowances to cogeneration units, industrial units and waste-tire-fired units on an output basis, or if there are a significant number of new entrants into these categories, DEP may revise its CAIR program to allocate to these categories on an output basis.

For purposes of construing Connecticut's proposed SIP revision, EPA interprets RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) to prohibit the Connecticut DEP from allocating allowances in excess of the total state budget, and to control in any conflict with RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A). Thus, if the operation of RCSA sections 22a–174–22c(e)(7)(A)–(B) and/or 22a–174–22c(e)(8)(A) were to yield allowances for cogeneration units, industrial units, waste-tire-fired units, or Phase I units in excess of the state budget, either by themselves or in combination with allocations to other categories, then RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) would require the Connecticut DEP to recalculate or reallocate allowances so as not to exceed the state budget.

EPA is relying on this interpretation of Connecticut's proposed SIP revision for the purposes of approving it as meeting the requirements of the Act and the CAIR program. If EPA does not receive comments to the contrary from the Connecticut DEP or any other party during the public comment period, the interpretations stated above will represent EPA's formal interpretations of the SIP provisions at issue for purposes of federal law.

#### (3) NO<sub>x</sub> Reporting Requirements

Under the CAIR model rule, facilities that are subject to the Acid Rain Program or the CAIR NO<sub>x</sub> and SO<sub>2</sub> annual trading programs must report emissions data year-round, but facilities that are only subject to the NO<sub>x</sub> ozone season trading program need only submit NO<sub>x</sub> emission data to the State during the ozone season. As noted above, Connecticut is only required to

participate in the CAIR NO<sub>x</sub> ozone season program. However, Connecticut's proposed CAIR program requires additional data reporting beyond that required by the model CAIR NO<sub>x</sub> ozone season rule. Specifically, all units would be required to provide annual reports of net electricity output and useful steam output (or an estimate of this steam output) for each control period. New CAIR units would be required to provide annual estimates of the total number of hours of operation for each control period. Units that are not subject to an Acid Rain emissions limitation and that are monitoring NO<sub>x</sub> emissions using a CEMS (but not those that are not monitoring using a CEMS) would be required to report emissions on a year-round basis.

EPA has determined that these modifications of the CAIR NO<sub>x</sub> ozone season trading rule in regard to reporting of output data are acceptable.

#### (4) Submittal of CAIR Allocations to EPA

In the SIP revision, Connecticut requires the State to provide EPA with existing-unit CAIR allocations for each control period beyond 2011 by October 31st of each year beginning in 2008. For units starting operation after January 1, 2001 that are treated as new units, the State would notify EPA of each unit's allocation by July 31st of the year for which the CAIR allowances are allocated. EPA has determined that these proposed reporting deadlines are acceptable.

#### E. 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.

The Connecticut CAIR SIP does not include opt-in provisions. Under the model CAIR NO<sub>x</sub> ozone season trading rule, the energy-output methodology that Connecticut proposes to use to allocate allowances cannot be used for opt-in sources.

#### VI. Proposed Action

EPA is proposing to approve Connecticut's full CAIR SIP revision submitted on April 26, 2007, including new RCSA section 22a-174-22c ("The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO<sub>x</sub>) Ozone Season Trading Program"), repeal of existing RCSA section 22a-174-22a ("The Connecticut NO<sub>x</sub> Budget Program"), as of May 1, 2009, and repeal of existing RCSA section 22a-174-22b ("The Connecticut Post-2002 NO<sub>x</sub> Budget Program"), as of May 1, 2010. Under this SIP revision, Connecticut is choosing to participate in the EPA-administered cap-and-trade program for NO<sub>x</sub> ozone-season emissions. Connecticut's proposed SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO<sub>x</sub> ozone-season emissions. 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 FIP concerning NO<sub>x</sub> ozone-season emissions for Connecticut. This action will delete and reserve 40 CFR 52.386.

#### 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 (Public Law 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 Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects 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.

Dated: August 22, 2007.

**Ira Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. E7-17196 Filed 8-30-07; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket No. FEMA-B-7733 and FEMA-D-7816]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being

already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings.

*National Environmental Policy Act.*

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	Elevation in feet(NGVD)+Elevation in feet(NAVD)#Depth in feet above ground		Communities affected
		Effective	Modified	
<b>Lowndes County, Georgia, and Incorporated Areas</b>				
Sugar Creek .....	At Baytree Road ..... Approximately 1,100 feet downstream of the confluence of One Mile Branch.	None None	*145 *148	City of Remerton.

\* National Geodetic Vertical Datum.

# Depth in feet above ground.

+ North American Vertical Datum.

**ADDRESSES  
City of Remerton**

Maps are available for inspection at 1757 Poplar Street, Remerton, GA 31601.

Send comments to The Honorable Peggy Seifert, Mayor, City of Remerton, 1757 Poplar Street, Remerton, GA 31601.