

Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer Advancement Act*

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

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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it does not affect the level of protection provided to human health or the environment. The proposed rule amendment is deregulatory and does allow relaxation of the control measures on sources. However, this is not expected to lead to increased ozone formation since the compounds being exempted have been determined to have negligible photochemical reactivity.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 25, 2007.

**Stephen L. Johnson,**

*Administrator.*

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for part 51, subpart F, continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470-7479, 7501-7508, 7601, and 7602.

**§ 51.100 [Amended]**

2. Section 51.100 is amended at the end of paragraph (s)(1) introductory text by removing the words "and perfluorocarbon compounds which fall into these classes:" and adding in their place a semi-colon and the words "; propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:".

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[Docket No. EPA-R02-OAR-2007-0913; FRL-8474-9]**

**Approval and Promulgation of Implementation Plans; New York: Clean Air Interstate Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) that

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 New York. 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 New York pending final approval of New York's SIP revision. The CAIR FIPs for all states in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

The SIP revision that EPA is proposing to approve will also satisfy New York's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport.

CAIR requires states to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to and interfere with the maintenance of the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes state budgets for SO<sub>2</sub> and NO<sub>x</sub> and requires states, which EPA has concluded contribute to nonattainment in downwind states, to submit SIP revisions that implement these budgets. States have the flexibility to choose the 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, New York 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 October 31, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2007-0913, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).
3. *Fax:* (212) 637-3901.
4. *Mail:* EPA-R02-OAR-2007-0913, Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

5. *Hand Delivery or Courier:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2007-0913. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's proposal, please contact Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. The telephone number is (212) 637-3702. Mr. Fradkin can also be reached via electronic mail at [Fradkin.kenneth@epa.gov](mailto:Fradkin.kenneth@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

EPA is proposing to approve a revision to New York's SIP that was adopted on August 28, 2007 and submitted on September 17, 2007. New York's revision addresses the Clean Air Interstate Rule (CAIR) and obligations under 110(a)(2)(D)(i) for the 8-hour ozone and fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). New York had submitted an earlier version of the revision on March 30, 2007. EPA is proposing to approve the September revision only since it contains the version of New York's CAIR rulemaking that was adopted by New York's Environmental Control Board (ECB) on August 28, 2007.

In its SIP revision, New York will 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 on the SIP will be taken by the Regional Administrator for Region 2. In the event the proposed approval is finalized, 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 New York. This action will delete and reserve 40 CFR 52.1684 and 40 CFR 52.1685, relating to the CAIR FIP obligations for New York. The withdrawal of the CAIR FIPs for New York 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 New York. 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.

In addition, EPA is also proposing approval of a revision to New York's SIP to address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA). This section of the Act requires each state to submit a SIP that prohibits emissions that could adversely affect another state. The SIP must prevent sources in the state from emitting pollutants in amounts that will: (1) contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

#### **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 provides an explanation of what states must include in SIPs to address the requirements of section 110(a)(2)(D) of the 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 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 without making any substantive changes to the CAIR requirements, announced EPA's final decisions on reconsideration of five issues, including certain technical, allocation, compliance, cost-effectiveness, and timing issues, as well as a decision specific to Florida.

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

CAIR established 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 New York's CAIR SIP Submittal

New York has submitted regulations in its SIP revision, Title 6 of the New York Code of Rules and Regulations (NYCRR), Parts 243, 244, and 245, to implement the CAIR Cap-and-Trade Programs in New York. The SIP revision also addresses outstanding obligations under 110(a)(2)(D)(i). The acceptability

of New York's submittal is discussed below.

#### 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 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 today's action, EPA is proposing approval of New York's SIP revision that adopts the budgets established for the State in CAIR. The Statewide CAIR NO<sub>x</sub> ozone season budget is 20,632 tons of NO<sub>x</sub> ozone season emissions for phase 1 (2009–2014) and 17,193 tons for phase 2 (2015 and thereafter), plus an additional 10,459 tons of NO<sub>x</sub> ozone season emissions for both phases 1 and 2 to account for NO<sub>x</sub> ozone season emissions from "non-EGU" units from the New York NO<sub>x</sub> SIP Call trading program (see V.B. below). The total NO<sub>x</sub> ozone season budget is therefore 31,091 tons of NO<sub>x</sub> ozone season emissions for CAIR phase 1 and 27,652 tons for CAIR phase 2. The Statewide CAIR NO<sub>x</sub> annual budget is 45,617 for CAIR phase 1 and 38,014 for CAIR phase 2 for NO<sub>x</sub> annual emissions. The Statewide CAIR SO<sub>2</sub> trading program budget is 135,139 for phase 1 (2010–2014) and 94,597 for phase 2 (2015 and thereafter) tons for SO<sub>2</sub> emissions. New York's SIP revision sets these budgets as the total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

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

The CAIR NO<sub>x</sub> annual and ozone-season model trading rules both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR part 96,

subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone-season model rules are similar, there are some differences. For example, the NO<sub>x</sub> annual model rule (but not the NO<sub>x</sub> ozone season model rule) provides for a Compliance Supplement Pool (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. As discussed in Section V.A. above, the SO<sub>2</sub> model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO<sub>2</sub> cap-and-trade program.

In the SIP revision, New York 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. New York 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 of EPA's model trading rule. 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.

New York has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all non-EGUs currently in the State's NO<sub>x</sub> SIP Call 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 FIPs 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 to allocate allowances to sources in the states if certain requirements are met. Primarily, the timing of the submission of NO<sub>x</sub> annual and NO<sub>x</sub> ozone season CAIR units' allocations to the Administrator for recordation and the total amount of NO<sub>x</sub> annual and NO<sub>x</sub> ozone season allowances allocated for each control period must be consistent with the applicable requirements in 40 CFR 51.123(o) and (aa). 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.

New York has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual and ozone-season model trading rules concerning the allocation of NO<sub>x</sub> annual and ozone-season allowances with its own methodology.

New York's allocation methodology is based on the highest heat input (EGUs and non-EGUs) experienced by a CAIR unit for any single control period among the three most recent control periods, for which data is available. The number of allocations to be allocated to each unit will not exceed the unit's control period potential to emit (CPPTE), which is defined as the maximum capacity of a CAIR NO<sub>x</sub> unit to emit NO<sub>x</sub> under its physical and operational design during a control period. All fuel types are weighed evenly without adjustment of heat input data for fuel type.

New York is establishing new CAIR NO<sub>x</sub> Ozone Season and CAIR NO<sub>x</sub> annual set-aside accounts for units commencing operation on/or after May 1, 2003 for CAIR NO<sub>x</sub> Ozone Season units, and on/or after January 1, 2003 for CAIR NO<sub>x</sub> annual units. The new unit set-aside accounts will consist of five percent of the statewide CAIR NO<sub>x</sub> ozone season and NO<sub>x</sub> annual budgets for both phases of the CAIR program. Therefore, the new unit set-aside includes 1,554 CAIR NO<sub>x</sub> ozone-season allowances during phase 1, and 1,382 CAIR NO<sub>x</sub> ozone-season allowances during phase 2; and 2,280 CAIR NO<sub>x</sub> annual allowances during phase 1 and 1,900 CAIR NO<sub>x</sub> annual allowances during phase 2.

If the number of requests for allowances exceeds the number of allowances in the new set-aside account, New York will reserve allowances in the order in which approvable requests were submitted. Requests will be considered simultaneous if received in the same calendar quarter. Should approvable requests in excess of the set-aside be submitted in the same quarter, New York will reserve allowances for those units in an amount proportional to the allowances requested. Any unused allowances from the set-aside will flow back to existing sources as additional allocations in proportion to their original allocation.

New York will distribute all allowances at no cost with the exception of allowances held in the Energy Efficiency and Renewable Energy Technology (EERET) Account. New

York is allocating ten percent of emission allowances to the Energy Efficiency and Renewable Energy Technology (EERET) Account, which will be administered by the New York State Energy Research and Development Authority (NYSERDA). Allowances will be sold or distributed in order to provide funds to be used to support programs that encourage and foster energy efficiency measures and renewable energy technologies and cover reasonable costs associated with the administration and evaluation of these programs by NYSERDA. Any EERET allowances that are not sold or distributed by NYSERDA within 12 months of the initial allocation to the EERET account, will flow back to the New York Department of Environmental Conservation and be redistributed to existing CAIR units.

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

The CAIR establishes a compliance supplement pool (CSP) to provide an incentive for early reductions in NO<sub>x</sub> annual emissions. The CSP consists of 200,000 CAIR NO<sub>x</sub> annual allowances of vintage 2009 for the entire CAIR region, and a state's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that state. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO<sub>x</sub> reductions during 2007 or 2008 beyond what is required by any applicable state or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO<sub>x</sub> model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the states.

As a result of emission reductions already achieved in New York, the state will not receive any CSP allowances. Therefore, New York will not modify the provisions of the CAIR NO<sub>x</sub> annual model trading rule concerning the allocation of allowances from the CSP.

#### *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) 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. 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 decide to adopt none of the opt-in provisions.

New York has chosen to allow non-EGUs to opt into the CAIR NO<sub>x</sub> annual, CAIR NO<sub>x</sub> ozone season, and CAIR SO<sub>2</sub> trading programs. New York's program allows for both opt-in allocation methods as indicated in the model rule for opt-in units in general and for opt-in units that the owners and operators intend to repower before January 1, 2015.

#### *G. Satisfying Section 110(a)(2)(D)(i) of the Clean Air Act*

Section 110(a)(2)(D)(i) of the CAA requires each state to submit a SIP that prohibits emissions that could adversely affect another state. The SIP must prevent sources in the state from emitting pollutants in amounts that will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, New York's SIP revision is consistent with the guidance and the statute.

New York addresses the first two of these four elements by complying with the requirements of CAIR. New York satisfies these requirements either by

relying on the existing CAIR FIPs, or through approval of this SIP revision.

The third element New York addresses is prevention of significant deterioration (PSD). In accordance with the guidance issued on August 15, 2006, states may continue to rely on their existing Nonattainment New Source Review (NNSR) and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent states. New York has met the obligation by confirming that the federal PSD and state NNSR permitting programs remain in effect and continue to apply for the State's major stationary sources. In addition, New York is currently in the rulemaking process for part 231, New Source Review for New and Modified Facilities, which will be submitted to EPA as expeditiously as possible for approval and inclusion in the SIP. Part 231 will include 8-hour ozone and PM<sub>2.5</sub> PSD and NNSR permitting requirements for major sources in the state. Part 231 will also use PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub> in the PSD and NNSR programs.

With respect to the fourth element, visibility protection, and consistent with EPA's August 15, 2006 guidance, it is not possible at this time for New York to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility. New York will need to address the visibility protection requirements once the regional haze SIP is completed and submitted to EPA in December of 2007.

#### *H. What Other Clarifications Should New York Make in Its Program?*

New York should incorporate the definition of "fossil-fuel fired" under the NO<sub>x</sub> SIP Call into its CAIR NO<sub>x</sub> ozone season regulation. This revision should specify that the definition applies only for purposes of determining applicability for units that are not CAIR NO<sub>x</sub> Ozone Season units under the applicability criteria in 40 CFR 96.304. In the final New York CAIR ozone season regulation, the definition for "Fossil fuel fired" contained in 243-1.2(43)(ii), does not include this cross-reference to the applicability in 243-1.4(a)(3).

New York agrees with EPA's interpretation of the definition of "fossil fuel fired." As indicated in the September 17, 2007 SIP revision, New York has committed to revise the definition of "Fossil fuel fired" in its NO<sub>x</sub> CAIR ozone season regulation as discussed above. New York has committed to modify the definition simultaneous with revision of its CAIR regulations to address EPA's proposed rulemaking revising the cogeneration

unit definitions. New York will revise the definition of "fossil fuel fired" no later than the effective date of the NO<sub>x</sub> CAIR program.

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

EPA is proposing to approve New York's full CAIR SIP revision submitted on September 17, 2007. Under this SIP revision, New York 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 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. EPA is proposing to determine that the SIP as revised will meet the requirements of CAIR. If EPA approves New York's SIP revision, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions for New York. This action will delete and reserve 40 CFR 52.1684 and 40 CFR 52.1685.

EPA is also proposing that this revision adequately addresses the required elements of 110(a)(2)(D)(i) with the exception of the visibility protection requirement. This requirement will be re-evaluated after the regional haze SIP is completed and submitted to EPA in December 2007.

#### **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 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.

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

**Dated:** September 21, 2007.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E7-19346 Filed 9-28-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### 42 CFR Part 71

**RIN 0920-AA03**

#### Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal-Importation Regulations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Advance notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** On July 31, 2007, CDC published an advanced notice of proposed rulemaking (ANPRM), "Foreign Quarantine regulations, Proposed Revision of HHS/CDC Animal-Importation Regulations," (72 FR 41676) to begin the process of revising HHS/CDC Animal Importation Regulations that cover dogs and cats (42 CFR 71.51), and to consider extending these regulations to cover domesticated ferrets. The ANPRM will also address the importation of African rodents (42 CFR 71.56) into the United States. HHS/CDC is also considering the need for additional regulations to prevent the introduction of zoonotic diseases into the United States. CDC provided a 60-day public comment period, with written comments to be received on or before October 1, 2007. CDC has received requests asking for an extension of the comment period. In consideration of these requests, CDC is extending the comment period an additional 60 days, with a new closing date of December 1, 2007.

**DATES:** Written comments on the advance notice of proposed revision of HHS/CDC Animal Importation Regulations must be submitted on or before December 1, 2007. Please refer to **SUPPLEMENTARY INFORMATION** for additional information.

**ADDRESSES:** Written comments may be submitted to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, ATTN:

Animal Importation Regulations, 1600 Clifton Road, NE., (E03), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE., Atlanta, GA 30333. Please call ahead to 1-866-694-4867 and ask for a representative in the Division of Global Migration and Quarantine to schedule your visit.

Written comments may also be submitted electronically via the Internet at <http://www.regulations.gov> or via e-mail to [animalimportcomments@cdc.gov](mailto:animalimportcomments@cdc.gov). Electronic comments may be viewed at <http://www.cdc.gov/publiccomments/>.

An electronic copy of the rule can be found at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Robert Mullan, M.D., Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, (404) 639-4537.

**SUPPLEMENTARY INFORMATION:** On July 31, 2007, CDC published an advanced notice of proposed rulemaking (ANPRM), "Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal-Importation Regulations" (72 FR 41676). In that **Federal Register** Notice, CDC provided a 60-day public comment period. Written comments were to be received on or before October 1, 2007. Since the Notice was published, CDC has received requests asking for an extension of the public comment period beyond the 60 days originally provided. These requests have been made by national groups that represent organizations that will be affected by the proposed rule. In consideration of these concerns, CDC is extending the comment period by 60 days (until December 1, 2007) to give all interested organizations and persons the opportunity to comment fully.

Commenters should be aware that CDC's general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change, including any personal identifiers or contact information.

CDC has posted the ANPRM and related materials on its Web site at <http://www.cdc.gov/ncidod.dq>.

**Dated:** September 20, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 07-4852 Filed 9-27-07; 12:07 pm]

**BILLING CODE 4163-18-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 070803437-7439-01]

**RIN 0648-AV93**

#### Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish the 2008 first trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on over- or underharvests from the 2007 first trimester season. This proposed action would provide advance notice of quotas and season dates for the Atlantic commercial shark fishery. It would also ensure the measures in this action are in place until they are replaced by those implemented under Amendment 2 to the Highly Migratory Species (HMS) Fisheries Management Plan (FMP) even if Amendment 2 is finalized after the start of the second trimester season (May 1, 2008). As such, this action constitutes the regulatory action to determine quotas and season lengths for LCS, SCS and pelagic sharks for the 2008 second trimester season.

**DATES:** Comments on this proposed rule may be submitted at the public hearing (oral or written), via email, mail, or fax by October 31, 2007.

A public hearing will be held from 7-9 p.m. on October 3, 2007.

**ADDRESSES:** You may submit comments, identified by [0648-AV93], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 301-713-1917, Attn:[LeAnn Southward Hogan]
- Mail: 1315 East West Highway, Silver Spring, MD 20910

Please mark on the outside of the envelope "Comments on Proposed Rule for 2008 First Trimester Season Lengths and Quotas".

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for