

\* \* \* \* \*

[FR Doc. E7-20340 Filed 10-15-07; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 97**

[EPA-R05-OAR-2007-0405; FRL-8477-6]

**Approval of Implementation Plans; Wisconsin; Clean Air Interstate Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving a revision to the Wisconsin State Implementation Plan (SIP) submitted on June 19, 2007. The Wisconsin SIP revision was proposed for partial approval and partial disapproval on July 30, 2007. No comments were received during the comment period for the proposal. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) which concerns sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for the State of Wisconsin, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is approving an abbreviated SIP revision that addresses the methodology to be used to allocate annual and ozone season NO<sub>x</sub> allowances under the CAIR FIP, except for allowances in the compliance supplement pool. The portions of Wisconsin's submittal (those associated with the compliance supplement pool and Superior Environmental Performance) that EPA is disapproving are inconsistent with CAIR and/or otherwise inappropriate to include in a CAIR SIP and must, therefore, be disapproved.

**DATES:** This final rule is effective on October 16, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-0405. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. What Action Is EPA Taking?
- II. Did Anyone Comment on the Proposed Partial Approval and Partial Disapproval?
- III. What Are the General Requirements of CAIR and the CAIR FIPs?
- IV. Wisconsin's CAIR SIP Submittal
  - A. Nature of Wisconsin's Submittal
  - B. Summary of Wisconsin's Rules
  - C. NO<sub>x</sub> Allowance Allocations
  - D. Allocation of Allowances from the Compliance Supplement Pool (CSP)
  - E. Individual Opt-in Units
  - F. Additional Provision Found in Wisconsin's Abbreviated CAIR SIP Submittal
- V. Correction of Typographical Error in Proposed Rule
- VI. Final Action
- VII. When Is This Action Effective?
- VIII. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking?***CAIR SIP Partial Approval and Partial Disapproval*

EPA is partially approving and partially disapproving a revision to Wisconsin's SIP, submitted on June 19, 2007, which modifies the application of certain provisions of the CAIR FIP concerning SO<sub>2</sub>, NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Wisconsin is subject to the CAIR FIP that implements the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone

season cap-and-trade programs. The SIP revision provides a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> annual and NO<sub>x</sub> ozone season trading programs, instead of the Federal allocation methodology otherwise provided in the FIP. Consistent with the flexibility provided in the FIP, these provisions will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Wisconsin. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is disapproving certain separable provisions of Wisconsin's submittal. These provisions include NR 432.04 "compliance supplement pool" and NR 432.08 "superior environmental performance." NR 432.04 includes provisions that are inconsistent with CAIR. NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility.

NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of allowances from the CSP. Wisconsin has chosen to distribute CSP allowances based on early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit would still be eligible for CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding all the allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP

is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA is disapproving all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portions we are approving.

NR 432.08 would grant regulatory flexibility to sources that voluntarily reduce emissions beyond what is required under state and Federal regulations. The scope of regulatory flexibility provided by NR 432.08 is ambiguous. To the extent this flexibility relates to state-only regulatory requirements, the regulatory provisions are not appropriately included in a SIP. To the extent this flexibility relates to Federal requirements reflected in state regulations, this type of flexibility is not allowed under CAIR, and it is inappropriate to simply assume that other Federal requirements allow such flexibility. Therefore, the regulatory flexibility provisions cannot be included in Wisconsin's CAIR abbreviated SIP revision and cannot be approved.

## II. Did Anyone Comment on the Proposed Partial Approval and Partial Disapproval?

No comments were received during the 30-day comment period on the proposed partial approval and partial disapproval that was published on July 30, 2007.

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

CAIR establishes statewide 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. Wisconsin's CAIR SIP Submittal

### A. Nature of Wisconsin's Submittal

On June 19, 2007, Wisconsin submitted a request to process their rules for addressing CAIR requirements. The rules became effective at the state level on August 1, 2007. The Wisconsin Department of Natural Resources (WDNR) held hearings on these proposed rules on October 10 and October 12, 2006. The 30-day public comment period for the proposed rules ended on October 23, 2006.

### B. Summary of Wisconsin's Rules

The WDNR submitted Chapter NR 432 of the Wisconsin Administrative Code Chapters Related to Air Pollution Control, entitled "Allocation of Clean Air Interstate Rule NO<sub>x</sub> Allowances" for inclusion in the Wisconsin SIP. These rules are designed to address the requirements of the CAIR.

Chapter NR 432 includes eight subparts:

1. NR 432.01 Applicability; purpose
2. NR 432.02 Definitions
3. NR 432.03 CAIR NO<sub>x</sub> allowance allocation
4. NR 432.04 Compliance supplement pool
5. NR 432.05 CAIR NO<sub>x</sub> ozone season allowance allocation
6. NR 432.06 Timing requirements for allocations of CAIR NO<sub>x</sub> allowances and CAIR NO<sub>x</sub> ozone season allowances
7. NR 432.07 CAIR renewable units
8. NR 432.08 Superior environmental performance

A detailed description of the rule and its subparts can be found in the proposed partial approval/partial disapproval published in the **Federal Register** on July 30, 2007 (72 FR 41669).

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

The CAIR FIP provides States the flexibility to establish 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. These requirements relate to 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.

Subchapter NR 432.01 entitled, "Applicability; purpose" consolidates the applicability and purpose section for both the annual and ozone season trading programs. While the FIP already contains an applicability section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the applicability section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP.

Subchapter NR 432.02 entitled, "Definitions" adopts many of the CAIR FIP definitions but is rewritten in a format to conform to the state's regulatory writing style requirements. While the FIP already contains a definitions section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the definition section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP. Additionally, WDNR has added definitions not found in the CAIR FIP. These definitions are included to address the fact that Wisconsin's rule allocates allowances to renewable energy sources, which the FIP does not do, and to address the fact that Wisconsin allocates allowances to emitting sources based on energy output rather than heat input. The CAIR FIP uses a heat input based allocation methodology.

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. NR 432.03 contains the provisions for the NO<sub>x</sub> annual allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute NO<sub>x</sub> annual allowances based upon gross electrical output. The CAIR FIP

allocates allowances to NO<sub>x</sub> emitting sources only, and issues allowances on a fuel-weighted basis. Wisconsin's rule utilizes a different approach, which allocates allowances to renewable energy units, as well as NO<sub>x</sub> emitting sources, and does not issue allowances on a fuel-weighted basis. For units that have operated for five or more consecutive years, allocations are determined based on the unit's three highest annual gross electrical outputs. Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the number of NO<sub>x</sub> annual allocations that new unit can request from the new unit set-aside and is limited by the number of the unit's total tons of NO<sub>x</sub> emissions during the calendar year immediately preceding the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.03.

In a similar manner, Wisconsin has developed an ozone season NO<sub>x</sub> budget consistent with the flexibility given to states in the CAIR FIP. Wisconsin has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone season FIP concerning the allocation of NO<sub>x</sub> annual allowances with its own methodology. NR 432.05 contains the provisions for the NO<sub>x</sub> ozone season allowance distribution methodology that Wisconsin has adopted. Wisconsin has chosen to distribute NO<sub>x</sub> ozone season allowances based upon gross electrical output. The CAIR FIP allocates allowances to NO<sub>x</sub> emitting sources only, and issues allowances on a fuel-weighted basis. Wisconsin's rule uses a different approach, which allocates allowances to renewable energy units, as well as NO<sub>x</sub> emitting sources, and does not issue allowances on a fuel-weighted basis. Under Wisconsin's rule, the three highest ozone season amounts of the unit's gross electrical output will be the basis for determining that unit's allocations for units that have operated for five or more consecutive years. Additionally, Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of NO<sub>x</sub> ozone season allocations that a new unit can request from the new unit set-aside is limited by the number of that unit's total tons of NO<sub>x</sub> emissions during the ozone season preceding the calendar year of the request. Updating of unit baselines for

allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.05.

NR 432.06 describes the timing requirements for allocating both NO<sub>x</sub> annual allowances and NO<sub>x</sub> ozone season allowances. These requirements are consistent with the timing requirements for allocating allowances under an abbreviated SIP scenario found in 40 CFR 51.123 and are, therefore, being approved.

Since Wisconsin has chosen to allocate both NO<sub>x</sub> annual and NO<sub>x</sub> ozone season allowances to renewable energy units, the state has adopted provisions specifically for these sources. These provisions are found in NR 432.07 which requires renewable units to comply with the same trading requirements that apply to the regulated EGUs, such as designating an account representative who represents the unit in any trading activity, establishing accounts for the NO<sub>x</sub> trading programs, and the process for requesting NO<sub>x</sub> allowances.

#### *D. Allocation of NO<sub>x</sub> Allowances From the Compliance Supplement Pool (CSP)*

The CSP provides 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 for 2009 for the entire CAIR region, and a state's share of the CSP is based upon the state's share of the projected emission reductions under CAIR. 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 NO<sub>x</sub> annual FIP 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 those states. See 40 CFR 51.123(p)(2) (requiring that State CSP provisions be consistent with the model rule at 40 CFR 96.143, the FIP at 40 CFR 97.143, or CAIR at 40 CFR 51.123(e)(4)).

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of allowances from the CSP. NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Wisconsin has chosen to distribute CSP allowances based on

early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit could be given CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding all the allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA is disapproving all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portions we are approving.

In the absence of approved CSP provisions in an abbreviated CAIR SIP, the FIP provisions for the allocation of CSP allowances continue to apply in Wisconsin.

#### *E. Individual Opt-in Units*

The opt-in provisions allow for 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. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state's abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to allow non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> annual trading program, the CAIR NO<sub>x</sub> ozone season trading program, or the CAIR SO<sub>2</sub> trading program.

#### *F. Additional Provision Found in Wisconsin's Abbreviated CAIR SIP Submittal*

There is an additional provision that Wisconsin has submitted as part of the abbreviated CAIR SIP.

NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility. For the reasons discussed above, we are disapproving this portion of Wisconsin's CAIR abbreviated SIP. This portion is separable from the rest of Wisconsin's SIP submittal and can be disapproved without compromising the integrity of the portions we are approving.

#### **V. Correction of Typographical Error in Proposed Rule**

We would like to point out a typographical error in the proposed partial approval/partial disapproval published on July 31, 2007 (72 FR 41669). In section, V. Analysis of

Wisconsin's CAIR SIP Submittal, subsection C. State Budgets for Allowance Allocations, we stated, "The CAIR FIP established the budgets for Wisconsin as \* \* \* 17,987 tons for NO<sub>x</sub> ozone season emissions for 2010–2014 \* \* \*" We are correcting this to read, "The CAIR FIP established the budgets for Wisconsin as \* \* \* 17,987 tons for NO<sub>x</sub> ozone season emissions for 2009–2014 \* \* \*" As stated earlier in that same subsection NO<sub>x</sub> budgets, both seasonal and annual, were developed for the 2009–2014 period.

#### **VI. Final Action**

EPA is partially approving and partially disapproving Wisconsin's abbreviated CAIR SIP revision submitted on June 19, 2007. Wisconsin is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Wisconsin has adopted provisions for allocating allowances under the CAIR FIP NO<sub>x</sub> annual and NO<sub>x</sub> ozone season trading programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIP in Wisconsin. These provisions in Wisconsin's abbreviated SIP revision meet the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Wisconsin's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

Wisconsin's submittal also contains provisions that are inconsistent with requirements concerning the CSP and that grant unacceptable regulatory flexibility to some sources. EPA is disapproving these portions of Wisconsin's rule. We are able to disapprove these specific portions of Wisconsin's submittal because they are separable from the rest of Wisconsin's submittal and disapproving only these parts has no effect on the rest of the submittal that we are approving.

#### **VII. When Is This Action Effective?**

EPA finds that there is good cause for this approval to become effective on October 16, 2007, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5

U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

CAIR SIP approvals relieve states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply to it, allowing States to make their own allowance allocations based on their SIP-approved State rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Wisconsin's relief from these obligations provides good cause to make this rule effective October 16, 2007, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Wisconsin and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule 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 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 approves a State rule implementing a Federal standard and amends the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it 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 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

40 CFR Part 52

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

40 CFR Part 97

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

Dated: September 21, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(116) to read as follows:

§ 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(116) A revision to the State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on June 19, 2007. This revision consists of regulations to meet the requirements of the Clean Air Interstate Rule.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference: NR 432.01 "Applicability; purpose"; NR 432.02 "Definitions"; NR 432.03 "CAIR NOx allowance allocation"; NR 432.05 "CAIR NOx ozone season allowance allocation"; NR 432.06 "Timing requirements for allocations of CAIR NOx allowances and CAIR NOx ozone season allowances"; and NR 432.07 "CAIR renewable units", as created and published in the (Wisconsin) Register, July, 2007, No. 619, effective August 1, 2007.

\* \* \* \* \*

40 CFR part 97 is amended as follows:

PART 97—[AMENDED]

3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et seq.

4. Appendix A to Subpart EE is amended by adding the entry for Wisconsin in alphabetical order under paragraph 1. to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

\* \* \* \* \*

1. \* \* \*

Wisconsin

\* \* \* \* \*

5. Appendix A to Subpart EEEE is amended by adding the entry for "Wisconsin" in alphabetical order to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

\* \* \* \* \*

Wisconsin

\* \* \* \* \*

[FR Doc. E7-20165 Filed 10-15-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA-R05-OAR-2007-0390; FRL-8481-2]

Approval of Implementation Plans; Ohio; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Ohio State Implementation Plan (SIP) submitted on September 26, 2007. Ohio initially submitted a SIP revision on April 17, 2007, with a proposed rule and then revised it and submitted a SIP revision with a final rule on September 26, 2007. This SIP revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning sulfur dioxide (SO2), oxides of nitrogen (NOx) annual, and NOx ozone season emissions for the State of Ohio, promulgated on April 28, 2006 and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is amending to the extent EPA approves Ohio's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The Ohio SIP revision that was submitted on April 17, 2007, was a full CAIR SIP revision. In a letter submitted on September 26, 2007, Ohio requested that EPA consider the September 26, 2007, submittal as two separate submittals, i.e., as a full CAIR SIP and as an abbreviated CAIR SIP. Ohio requested that EPA act on specific portions of the September 26, 2007,