

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 NO_x allowance allocation"; NR 432.05 "CAIR NO_x ozone season allowance allocation"; NR 432.06 "Timing requirements for allocations of CAIR NO_x allowances and CAIR NO_x 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.

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- 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

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- 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

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Wisconsin

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[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 (NO_x) annual, and NO_x 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,

submittal as an abbreviated CAIR SIP. Consequently, today, EPA is taking final action only on the abbreviated SIP revision and not the full CAIR SIP revision, which will be the subject of a separate future action. EPA is approving Ohio's abbreviated SIP revision that addresses the methodology used to allocate annual and ozone season NO_x allowances to affected electric generating units (EGUs), and the opt-in provisions, under the CAIR trading programs and the CAIR FIP.

DATES: This direct final rule is effective December 17, 2007 without further notice, unless EPA receives adverse comment by November 15, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0390, by one of the following methods:

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

2. E-mail: mooney.john@epa.gov.

3. Fax: (312) 886-5824.

4. Mail: Reference EPA-R05-OAR-2007-0390 Docket, Air Programs Branch, U.S. Environmental Protection Agency, (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery or Courier: John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, U.S. Environmental Protection Agency, (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. 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-R05-OAR-2007-0390". EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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

www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The 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 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 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 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. 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: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. The telephone number is (312) 886-6084. Mr. Paskevicz can also be reached via electronic mail at: paskevicz.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action Is EPA Taking?
- II. What Is the Regulatory History of CAIR and the CAIR FIPs?
- III. What Are the General Requirements of CAIR and the CAIR FIPs?
- IV. What Are the Types of CAIR SIP Submittals?
- V. Analysis of Ohio's CAIR SIP Submittal

- A. State Budgets for Allowance Allocations
- B. CAIR Cap-and-Trade Programs
- C. Applicability Provisions for Non-EGUs
- NO_x SIP Call Sources
- D. NO_x Allowance Allocations
- E. Allocation of NO_x Allowances From the Compliance Supplement Pool (CSP)
- F. Individual Opt-in Units
- VI. Final Action
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

CAIR SIP Approval

EPA is approving a revision to Ohio's SIP, submitted on September 26, 2007, that modifies the application of certain provisions of the CAIR FIP concerning SO₂, NO_x annual, and NO_x ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Ohio is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO₂, NO_x annual, and NO_x ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_x allowances for the NO_x annual and NO_x ozone season trading programs. The CAIR FIPs provide that this methodology will be used to allocate NO_x allowances to sources in Ohio, instead of the federal allocation methodology otherwise provided in the FIPs. The SIP revision provides a methodology for allocating the compliance supplement pool in the CAIR NO_x annual trading program. The SIP also allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs in accordance with opt-in provisions of the CAIR FIPs. Consistent with the flexibility provided in the FIPs, these provisions will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for Ohio. EPA is not making any changes to the CAIR FIPs, 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.

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

CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include

control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_x for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets 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_{2.5} NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated 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 certain EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone-season model trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all States covered by 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 the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_x allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

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

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either (1) requiring EGUs to participate in the EPA-administered cap-and-trade programs or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO₂ and NO_x budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs.

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_x allowance allocation methodology).

A State submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the state submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, the CAIR FIPs provide, will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_x ozone season trading program;
2. Provide for allocation of NO_x annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;
3. Provide for allocation of NO_x annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; and/or
4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_x allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are

implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the September 26, 2007, submittal from Ohio requests an abbreviated SIP revision. As discussed below, Ohio requested three of the four provisions for which a State may request an abbreviated SIP. The State requested that its allocation of NO_x annual and NO_x ozone season allowances for EGUs under the FIP be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. The State requested that its allocation of NO_x annual allowances from the compliance supplement pool (CSP) be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. Finally, the State asked that units, that are not otherwise CAIR units, may opt individually into the CAIR FIP cap-and-trade program under the opt-in provisions in the CAIR FIP rules.

V. Analysis of Ohio's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_x 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_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_x annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO₂ 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 under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO₂ 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 emissions in the CAIR trading program.

The CAIR FIPs established the budgets for Ohio as 108,667 tons for NO_x annual emissions, 45,664 tons for NO_x ozone season emissions, and 333,520 tons for SO₂ emissions. The Ohio SIP revision, approved in today's action, does not affect these budgets, which are total amounts of allowances

available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

B. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season FIPs both largely mirror the structure of the NO_x SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_x annual and ozone-season FIPs are similar, there are some differences. For example, the NO_x annual FIP (but not the NO_x ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season FIP reflects the fact that the CAIR NO_x ozone season trading program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone-season trading program. In addition, States have the option of continuing to meet their NO_x SIP Call requirement by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

The provisions of the CAIR SO₂ FIP are also similar to the provisions of the NO_x annual and ozone season FIPs. However, the SO₂ FIP is coordinated with the ongoing Acid Rain SO₂ cap-and-trade program under CAA title IV. The SO₂ FIP 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 SO₂ 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 SO₂ cap-and-trade program.

EPA 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 SO₂, NO_x annual, and NO_x ozone season trading rules and the

respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

Ohio is subject to the CAIR FIPs concerning SO₂, NO_x annual, and NO_x ozone season emissions, and the CAIR FIP trading programs for SO₂, NO_x annual, and NO_x ozone season apply to sources in Ohio. Consistent with the flexibility they give to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The Ohio EPA September 26, 2007, submission is such an abbreviated SIP revision.

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

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State's NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_x ozone season trading program all units required to be in the State's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x 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_x SIP Call trading program.

Consistent with the flexibility given to States in the CAIR FIP Ohio has not chosen, in the abbreviated CAIR SIP approved here, to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the State's NO_x SIP Call trading program. However, EPA notes that Ohio has indicated that the full SIP revision submitted on September 26, 2007, expands the applicability provisions of CAIR NO_x ozone season trading program in this manner. As such, EPA is not taking final

action on the non-EGU portion of the State's September 26, 2007, full CAIR SIP revision. The full CAIR SIP revision including actions to approve the non-EGU portions of the State's CAIR rule will be the subject of a separate future action.

D. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different NO_x 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_x allowance allocation methodologies, States have flexibility with regard to:

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

Consistent with the flexibility given to States in the CAIR FIPs, Ohio has chosen to replace the provisions of the CAIR NO_x annual FIP concerning the allocation of NO_x annual allowances with its own methodology. Ohio has chosen to distribute NO_x annual allowances based upon heat input data from a three year period adjusted for fuel type by using fuel adjustment factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. Based on this methodology, Ohio determined NO_x allocations for EGUs in the State under the CAIR FIP, and submitted its allocations to EPA on April 24, 2007.

Ohio also has included, in the abbreviated SIP revision, provisions regarding set-aside programs for energy efficiency/renewable energy and innovative technology projects under the CAIR NO_x Ozone Season program.

The State's energy-efficiency/renewable energy (EE/RE) and innovative technology set-aside program provisions establish two set-asides for each control period, one set-aside for EE/RE projects and one set-aside for innovative technology projects, and specify procedures for allocating the allowances in the set-asides. Each set-aside is limited to one percent of the state trading budget for NO_x ozone season allowance allocations. Beginning with the end of 2009 and every three years thereafter, Ohio EPA will review the number of allowances allocated from the set-asides and will, under certain circumstances, increase the size of each set-aside in future years as necessary, up to a maximum of five percent of the state trading budget.

EPA notes that the set-aside provisions do not explicitly state how allowances will be reserved in the set-asides if the total amount of allowances requested from a set-aside exceeds the total amount of allowances in that set-aside. However, set-aside provisions explicitly limit the amount of allowances available from each set-aside to one percent of the state trading budget unless Ohio EPA expands the set-asides in future years. In addition, Ohio informed EPA, in the September 26, 2007, letter, that its guidance for the set-asides provides that set-aside allowances will be reserved on a pro-rata basis if the total requested allowances exceed the size of the set-aside. Ohio has indicated that it will clarify its set-aside provisions consistent with this guidance.

The set-aside provisions also do not explicitly state how a set-aside will be increased up to five percent of the state trading budget if the existing set-aside amounts plus the total amounts allocated to units with and without baseline heat input under Ohio's other allocation provisions for NO_x ozone season allowances already equal the state trading budget. However, Ohio's CAIR NO_x ozone season allocation provisions clearly limit the total allocations for each control period of CAIR NO_x ozone season allowances to the amount of the state trading budget for that control period. Further, as written, the provisions for expanding the set-asides cannot have any effect on the current allocations, which Ohio has already submitted to the Administrator for phase 1 of the trading program. In addition, Ohio informed EPA, in the September 28, 2007, letter, that Ohio EPA will reduce the total amount of allowances allocated to existing units under the other allocation provisions to the extent the size of a set-aside is increased in the future. Ohio has

indicated that it will clarify its allocation provisions consistent with this statement in the September 28, 2007, letter.

Consequently, EPA interprets Ohio's abbreviated SIP to limit the total allocations for each control period of CAIR NO_x ozone season allowances (whether from current or expanded set-asides or under the other allocation provisions in the abbreviated SIP) to the state trading budget, consistent with the requirements of 40 CFR 51.123(ee)(2)(ii)(B).

E. Allocation of NO_x Allowances From the Compliance Supplement Pool (CSP)

The CSP provides an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 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_x 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_x 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.

Consistent with the flexibility given to States in the FIP, Ohio has chosen to modify the provisions of the CAIR NO_x annual FIP concerning the allocation of allowances from the CSP. Ohio has chosen to distribute CSP allowances using an allocation methodology that provides more certainty to unit owners and operators that a known quantity of allowances per unit will be available for distribution at the beginning of the control period. Ohio also provides owners and operators with an incentive for the operation of expensive post-combustion control equipment year-round and provides incentives for early reductions in emissions before 2009. Ohio EPA is required to submit allocations from the CSP to the Administrator by July 1, 2009, or such time when unit's 2008 emissions data are available so that the allocations can be determined. Ohio's abbreviated SIP also states that the Administrator will record the allocations by January 1, 2010. While Ohio's abbreviated SIP does not explicitly state that allocations will be submitted to the Administrator by

November 30, 2009, EPA notes that units' 2008 emissions data should certainly be available before that date and that the allocations need to be submitted by that date in order to ensure that the Administrator will complete recordation of allowances by January 1, 2010. Further, Ohio has indicated, in the September 26, 2007, letter, that it will clarify its CSP provisions to provide for a deadline of November 30, 2009, for submission of CSP allocations to the Administrator. Consequently, EPA considers the Ohio abbreviated SIP to meet the requirements of 40 CFR 51.123(p)(2).

F. 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 FIPs, Ohio has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program, the CAIR NO_x ozone season trading program and the CAIR SO₂ trading program. Ohio EPA submitted the CAIR SIP program rules, OAC 3745-109-08 and OAC 3745-109-14 and OAC 3745-109-21, which incorporate the opt-in provisions as provided in the final EPA CAIR rule of April 28, 2006. These rules address opt-ins for NO_x ozone season, NO_x annual, and SO₂ annual programs.

VI. Final Action

EPA is approving the rules contained in Ohio's abbreviated CAIR SIP revision submitted on September 26, 2007. Ohio is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Under this abbreviated SIP revision, and consistent with the flexibility given to States in the FIPs, Ohio adopts provisions for allocating allowances under the CAIR FIP NO_x annual and ozone season trading programs. In addition, Ohio adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP and allow for individual non-EGUs to opt into the CAIR FIP SO₂, NO_x annual, NO_x ozone season cap-and-trade programs. As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in Ohio. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(r), with regard to SO₂ emissions. EPA is not making any changes to the CAIR FIPs, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 approves a State rule implementing a Federal Standard.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 97

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

Dated: September 28, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set forth in the preamble, parts 52 and 97 of chapter 1 of title 40 of the Code of Federal Regulations are 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 KK—Ohio

■ 2. In § 52.1870 is amended by adding paragraph (c)(140) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(140) Ohio Environmental Protection Agency submitted amendments on September 26, 2007, to the State Implementation Plan to control emissions from electric generating units (EGU). Rules affecting these units include: Ohio Administrative Code (OAC) 3745–109–01 (B)(59) and (72), 3745–109–04, 3745–109–08, 3745–109–14, 3745–109–17 (except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(d), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs), and 3745–109–21.

(i) *Incorporation by reference.* The following sections of the Ohio

Administrative Code (OAC) are incorporated by reference.

(A) OAC 3745–109–01(B)(59) “Energy efficiency/renewable energy project”; OAC 3745–109–01(B)(72) “Innovative technology project”; OAC 3745–109–04 “CAIR NO_x allowance allocations”; OAC 3745–109–08 “CAIR NO_x opt-in units”; OAC 3745–109–14 “CAIR SO₂ opt-in units”; and OAC 3745–109–21 “CAIR NO_x ozone season opt-in units”; effective on September 27, 2007.

(B) OAC 3745–109–17 “CAIR NO_x ozone season allowance allocations”; effective on September 27, 2007, except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(d), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs.

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 in alphabetical order the entry “Ohio” under paragraphs 1. and 2. to read as follows:

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

1. * * *

Ohio

* * * * *

2. * * *

Ohio

* * * * *

■ 5. Appendix A to subpart II is amended by adding in alphabetical order the entry “Ohio” under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_x Opt-In Units

1. * * *

Ohio

* * * * *

2. * * *

Ohio

* * * * *

■ 6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry “Ohio” under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart III of Part 97—
States With Approved State
Implementation Plan Revisions
Concerning CAIR SO₂ Opt-In Units**

1. * * *
Ohio
* * * * *
2. * * *
Ohio
* * * * *

■ 7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry “Ohio” to read as follows:

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

* * * * *
Ohio
* * * * *

■ 8. Appendix A to subpart IIII of part 97 is amended by adding in alphabetical order the entry “Ohio” under paragraphs 1. and 2. to read as follows:

**Appendix A to Subpart IIII of Part 97—
States With Approved State
Implementation Plan Revisions
Concerning CAIR NO_x Ozone Season
Opt-In Units**

1. * * *
Ohio
2. * * *
Ohio
* * * * *

[FR Doc. E7-20252 Filed 10-15-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each 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 date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final 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) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the

proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final 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 final 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 final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final 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 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
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Breathitt County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-7714

North Fork Kentucky River	Approximately 7.43 miles downstream of the confluence with Frozen Creek near Cy Bend. Approximately 2.83 miles upstream of the Robinson Road Bridge at Quick Sand.	+717 +754	Breathitt County (Unincorporated Areas), City of Jackson.
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