

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R01-OAR-2007-0399; FRL-8517-4]

**Approval and Promulgation of Air Quality Implementation Plans; Connecticut; State Implementation Plan Revision to Implement the Clean Air Interstate Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on April 26, 2007, with amendments submitted on September 12, 2007. This SIP revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006 and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Connecticut. Therefore, as a consequence of the SIP approval, the Administrator of EPA will also, in a separate document, issue a final rule to withdraw the Federal Implementation Plan (FIP) concerning NO<sub>x</sub> ozone-season emissions for Connecticut.

In the SIP revision that EPA is approving, Connecticut will meet CAIR requirements by participating in the EPA-administered cap-and-trade program addressing NO<sub>x</sub> ozone-season emissions. Connecticut's SIP revision is based on EPA's model CAIR NO<sub>x</sub> ozone season rule and is, in most respects, substantively identical to that model rule. The Connecticut CAIR program has two major substantive differences from that model rule (expanded applicability, and a different methodology for allocating NO<sub>x</sub> allowances), both of which are consistent with the flexibility allowed under CAIR for state participation in the EPA-administered cap-and-trade program. The SIP revision complies with the statutory and regulatory requirements for approval of a CAIR NO<sub>x</sub> ozone-season program. This action is being taken in accordance with the Clean Air Act.

**DATES:** *Effective Date:* This rule is effective on January 24, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2007-0399. 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., 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 Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that, if at all possible, you contact the contact 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 legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

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

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**I. What Action Is EPA Taking?**

EPA is approving a revision to Connecticut's SIP that includes a new regulation, Regulations of Connecticut State Agencies (RCSA) section 22a-174-22c, "The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO<sub>x</sub>) Ozone Season Trading Program" (herein called "Connecticut's CAIR program"), repeal of RCSA section 22a-174-22a ("The Connecticut NO<sub>x</sub> Budget Program"), as of September 4, 2007, and repeal of RCSA section 22a-174-22b, "The

Connecticut Post-2002 NO<sub>x</sub> Budget Program" (herein called the "Connecticut NO<sub>x</sub> SIP Call trading program"), as of May 1, 2010. This SIP revision was first submitted on April 26, 2007, but includes amendments submitted on September 12, 2007.

The CT DEP had requested that EPA "parallel process" Connecticut's proposed CAIR SIP revision. Under this procedure, EPA prepared its proposed approval of Connecticut's SIP revision before the state's final adoption and repeal of the regulations referenced above.

EPA has reviewed Connecticut's final adopted regulations and determined that changes were made to clarify meaning, improve consistency, or to address redundancy, and that they do not differ significantly from the "post-hearing final draft" version that was the subject of the notice of proposed rulemaking (NPR) for this SIP Revision (72 FR 50305). For example, definitions of "commence commercial operation" and "commence operation" were clarified; the word "through" was substituted for a hyphen between dates listed to clearly identify the control periods included in the regulation; and language was added to clarify that the term "permitting authority" has the same meaning as in 40 CFR part 96, subpart AAAA, which refers to the CAIR NO<sub>x</sub> Ozone Season Trading Program. None of the changes made are deemed significant for SIP approval purposes, and it is, therefore, appropriate to prepare this final rule.

In its SIP revision, Connecticut will meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade program addressing NO<sub>x</sub> ozone-season emissions. EPA has determined that the Connecticut SIP, as revised, meets the applicable requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also, in a separate document, issue a final rule to withdraw the FIP concerning NO<sub>x</sub> ozone-season emissions for Connecticut. That action will delete and reserve 40 CFR 52.386. The withdrawal of the CAIR FIP for Connecticut is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIP was premised on a deficiency in the SIP for Connecticut. Once the SIP is fully approved, EPA no longer has authority for the FIP. Thus, EPA will not have the option of maintaining the FIP following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional

opportunity for written public comment on the withdrawal of the FIP.

## II. What Is the Regulatory History and General Requirements of 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 other control measures. 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.

More information on the regulatory history and requirements of CAIR and the CAIR FIPs is available in the NPR and will not be restated here.

## III. EPA Analysis of Connecticut's CAIR SIP Submittal

A brief summary of EPA's review of Connecticut's CAIR program is given below. Additional details regarding requirements of Connecticut's 22a-174-22c regulation and EPA's evaluation of this regulation are available in the NPR for this SIP revision. In addition, Connecticut's CAIR SIP submittal is available in the docket supporting this action.

### A. State Budgets for Allowance Allocations

The CAIR NO<sub>x</sub> annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1 of the CAIR program (2009-2014) and by 0.125 lb/mmBtu, for phase 2 of the CAIR program (2015 and thereafter) to obtain regional NO<sub>x</sub> budgets for 2009-2014 and for 2015 and thereafter, respectively. EPA derived the State NO<sub>x</sub> annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors. Connecticut, however, is only required to participate in the CAIR NO<sub>x</sub> ozone-season program, not the CAIR NO<sub>x</sub> annual or SO<sub>2</sub> trading programs. Therefore, only CAIR NO<sub>x</sub> ozone-season budgets apply to the Connecticut CAIR program.

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

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

The CAIR NO<sub>x</sub> annual and ozone-season model trading rules both largely mirror the structure of the NO<sub>x</sub> SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone-season model rules are similar, there are some differences. For example, the NO<sub>x</sub> ozone season model rule reflects the fact that the CAIR NO<sub>x</sub> ozone-season trading program replaces the NO<sub>x</sub> SIP Call trading program after the 2008 ozone-season and is coordinated with the NO<sub>x</sub> SIP Call program. The NO<sub>x</sub> ozone-season model rule provides incentives for early

emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> SIP Call allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone-season trading program. In addition, States have the option of continuing to meet their NO<sub>x</sub> SIP Call requirements 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.

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

### C. Applicability Provisions for Non-EGU NO<sub>x</sub> SIP Call Sources

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

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone-season program only, those units in the State's NO<sub>x</sub> SIP Call trading program that are not EGUs as defined under CAIR (herein called "non-EGUs"). 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.

Connecticut has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all units in the State's NO<sub>x</sub> SIP Call trading program. Units in the Connecticut NO<sub>x</sub> SIP Call trading program include EGUs of 15 MW or more and non-EGUs (such as industrial boilers and combustion turbines) with a maximum design heat input of 250 MMBtu/hr or more. These units will be included in the Connecticut CAIR program beginning with the control period in 2009. EPA has determined that Connecticut's regulation 22a-174-22c includes the allowable CAIR applicability provisions relating to adding all NO<sub>x</sub> SIP Call trading-program units to the Connecticut CAIR NO<sub>x</sub> ozone season program.

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

*Deadlines:* CAIR provides in 40 CFR 51.123(aa)(2)(iii)(C) that for a full SIP revision, “[t]he State’s methodology must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit’s allocation of CAIR NO<sub>x</sub> allowances by October 31, 2006 for the ozone seasons 2009, 2010, and 2011.” Connecticut’s SIP revision requires that it submit and in fact did submit these allocations by April 30, 2007 (the deadline for submittal applicable to abbreviated SIP revisions under 40 CFR 51.123(ee)(2)(ii)(C)). The purpose of the October 31, 2006 deadline was to allow EPA’s Clean Air Markets Division sufficient time to process the allocations. At this point, as Connecticut has in fact submitted its allocations well before the date of this document, and as the Clean Air Markets Division is fully able to process the allocations, it makes no difference whether EPA received the 2009–2011 allocations in April of 2007 or October of 2006. EPA will still be able to record the allocations and provide the allowances to owners and operators sufficiently in advance of the 2009–2011 control periods. EPA considers the late submittal harmless error and consequently approves this SIP revision.

*NO<sub>x</sub> allowance-allocation methodology:* Under the NO<sub>x</sub> allowance-allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO<sub>x</sub> annual and ozone-season allowances are allocated to units that have operated for five years (i.e., “existing units”), based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units’ prior year emissions.

States may establish in their SIP submissions a different NO<sub>x</sub> allowance-allocation methodology that will be used to allocate allowances to sources in the State if certain requirements are met concerning the timing of submission of units’ allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO<sub>x</sub> allowance-allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Connecticut has chosen to replace the provisions of the CAIR NO<sub>x</sub> ozone-season model trading rule concerning allowance allocations with its own methodology. Connecticut’s CAIR program is codified at RCSA section 22a–174–22c. Whereas the model trading rule uses an allocation methodology that is fuel-adjusted and based on heat input, Connecticut’s allocation methodology is not fuel-adjusted and is largely based on heat output. Connecticut also provides a percentage of allowances for a new unit set-aside and for an energy efficiency/renewable energy set-aside (EERESA) and Qualifying Other Project (QOPs).

For the 2009 through 2011 control periods, Connecticut will first allocate NO<sub>x</sub> allowances to CAIR NO<sub>x</sub> Ozone Season units which are cogeneration, industrial or waste-tire-fired units on an input basis, then will allocate allowances to older EGUs using an output basis. Remaining allocations will be allocated to newer EGUs on a pro-rated output basis. For the 2012 control period and beyond, Connecticut will allocate allowances to both older and newer EGUs on a pro-rated output basis.

Connecticut has set a new unit set-aside at 7 percent of the State’s CAIR budget during CAIR phase 1 (2009–2014), and at 5 percent of the State’s CAIR budget during CAIR phase 2 (2015 and thereafter). Therefore, the new unit set-aside includes 200 CAIR NO<sub>x</sub> ozone-season allowances during CAIR phase 1, and 134 allowances during CAIR phase 2. Connecticut has set the EERESA at 10 percent of the State’s CAIR budget for both phases of the CAIR program. Therefore, the EERESA includes 268 CAIR NO<sub>x</sub> allowances for the 2009 and subsequent ozone-season control periods.

More details on Connecticut’s methodology for allocating CAIR allowances, as well as information on Connecticut CAIR permits and requirements for facilities to report emissions data, can be found in the NPR and in Connecticut’s CAIR SIP submittal available in the docket supporting this action.

In the NPR, EPA identified two potential ambiguities in the allocation provisions of Connecticut’s proposed CAIR program, and proposed its interpretations of those provisions. See 72 FR 50309. EPA received no comments regarding these proposed interpretations. Consequently, EPA

interprets the provisions involved as follows.

First, the proposed regulation uses the term “NO[X] allowance,” which is not defined, in three places. See RCSA sections 22a–174–22c(c)(2), 22a–174–22c(c)(3)(B), 22a–174–22c(g)(4). EPA interprets the term “NO[X] allowance” when used in RCSA section 22a–174–22c as being identical to the term “CAIR NO[X] Ozone Season allowance” as defined at 40 CFR 96.302.

Second, under RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A), there is no limit to the number of allowances that can be allocated to CAIR NO<sub>x</sub> Ozone Season units which are cogeneration units, industrial units, waste-tire-fired units, or Phase I units in any control period. For purposes of construing Connecticut’s proposed SIP revision, EPA interprets RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) to prohibit the Connecticut DEP from allocating allowances in excess of the total state budget, and to control in any conflict with RCSA sections 22a–174–22c(e)(7)(A) and (B) and 22a–174–22c(e)(8)(A). Thus, if the operation of RCSA sections 22a–174–22c(e)(7)(A)–(B) and/or 22a–174–22c(e)(8)(A) were to yield allowances for CAIR NO<sub>x</sub> Ozone Season units which are cogeneration units, industrial units, waste-tire-fired units, or Phase I units in excess of the state budget, either by themselves or in combination with allocations to other categories, then RCSA sections 22a–174–22c(e)(2) and 22a–174–22c(e)(3) would require the Connecticut DEP to recalculate or reallocate allowances so as not to exceed the state budget.

EPA has relied on these interpretations of Connecticut’s proposed SIP revision for the purposes of approving it as meeting the requirements of the Act and the CAIR program, and these interpretations represent EPA’s formal interpretations of the SIP provisions at issue for purposes of federal law.

#### E. Individual Opt-in Units

The Connecticut CAIR SIP does not include opt-in provisions because the State has chosen to allocate CAIR allowances using an energy-output methodology that cannot be used for opt-in sources under the model CAIR NO<sub>x</sub> ozone-season trading rule. In addition, Connecticut does not expect there to be a demand for opt-in provisions as no source opted into Connecticut’s NO<sub>x</sub> SIP Call trading program.

#### IV. Final Action

EPA is approving a revision to Connecticut's SIP that includes a new regulation, RCSA section 22a-174-22c (Connecticut's CAIR program), and repeal of RCSA section 22a-174-22a ("The Connecticut NO<sub>x</sub> Budget Program"), as of September 4, 2007, and of RCSA section 22a-174-22b ("The Connecticut Post-2002 NO<sub>x</sub> Budget Program"), as of May 1, 2010. Under this SIP revision, Connecticut will participate in the EPA-administered cap-and-trade program for 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> ozone season emissions. EPA has determined that the SIP as revised meets the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIP concerning NO<sub>x</sub> ozone-season emissions for Connecticut. That action will delete and reserve 40 CFR 52.386 in part 52.

Other specific requirements of the CAIR SIP revision and the rationale for EPA's approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

#### V. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, 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 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 exempt states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply, allowing States to make their own allowance allocations based on their SIP-approved State rule. The exemption 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, Connecticut's exemption from these

obligations provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, 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 grants an exemption rather than imposing obligations, and where the effect of the final rule is simply to approve for federal purposes obligations that are already effective under state law, affected parties, such as the State of Connecticut and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

#### VI. 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 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.*). 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).

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 (65 FR 67249, November 9, 2000). 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), because it 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. 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.

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

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 March 24, 2008.

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 in 40 CFR Part 52**

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

Dated: January 15, 2008.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 H—Connecticut**

■ 2. Section 52.370 is amended by revising paragraph (c)(80)(i)(B) and adding paragraphs (c)(86)(iii) and (c)(97) to read as follows:

**§ 52.370 Identification of plan.**

\* \* \* \* \*

- (c) \* \* \*
- (80) \* \* \*
- (i) \* \* \*

(B) Regulation section 22a–174–22a, “The Nitrogen Oxides (NO<sub>x</sub>) Budget Program” adopted on December 15, 1998, and effective on March 3, 1999. As of January 24, 2008, Section 22a–174–22a is superseded and shall have no prospective effect. Violations of Section 22a–174–22a that occur prior to January 24, 2008 shall continue to be subject to enforcement, including on or after January 24, 2008, in accordance with applicable law.

\* \* \* \* \*

(86) \* \* \*

(iii) Section 22a–174–22b, State of Connecticut Regulation of Department of Environmental Protection Concerning The Post-2002 Nitrogen Oxides (NO<sub>x</sub>) Budget Program, is fully enforceable up to and including April 30, 2010. As of May 1, 2010, Section 22a–174–22b is superseded and shall have no prospective effect. Violations of Section 22a–174–22b that occur prior to May 1,

2010 shall be subject to enforcement, including on or after May 1, 2010, in accordance with applicable law.

\* \* \* \* \*

(97) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on April 26, 2007 and September 12, 2007.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies (RCSA) section 22a–174–22c entitled “The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO<sub>x</sub>) Ozone Season Trading Program,” effective in the State of Connecticut on September 4, 2007.

■ 3. In § 52.385, Table 52.385 is amended by adding new entries to existing state citations for 22a–174–22a and 22a–174–22b; and by adding a new state citation for 22a–174–22c to read as follows:

**§ 52.385 EPA-approved Connecticut regulations.**

\* \* \* \* \*

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
22a–174–22a .....	The Connecticut NO <sub>x</sub> Budget Program.	9/04/07	1/24/08	[Insert <b>Federal Register</b> page number where the document begins].	(c)(97)	Repealed as of January 24, 2008. Superseded by CAIR.
22a–174–22b .....	The Connecticut Post-2002 NO <sub>x</sub> Budget Program, as of May 1, 2010.	9/04/07	1/24/08	[Insert <b>Federal Register</b> page number where the document begins].	(c)(97)	Repealed as of May 1, 2010. Superseded by CAIR.
22a–174–22c .....	The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO <sub>x</sub> ) Ozone Season Trading Program.	9/04/07	1/24/08	[Insert <b>Federal Register</b> page number where the document begins].	(c)(97)	
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R02–OAR–2007–0913; FRL–8514–9]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action 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 has determined that the SIP revision fully implements the CAIR requirements for New York. As a result of this rulemaking, EPA will also withdraw, through a separate rulemaking, the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO<sub>2</sub>),