

CFR 51.1004(c), would no longer exist for the pertinent area(s), and the pertinent area(s) would thereafter have to address the pertinent requirements.

The determinations that EPA proposes with this action, that the air quality data show attainment of the 1997 PM_{2.5} NAAQS, is not equivalent to the redesignation of the areas to attainment. These proposed actions, if finalized, would not constitute a redesignation to attainment under 107(d)(3) of the CAA, because we would not yet have approved maintenance plans for the areas as required under 175A of the CAA, nor would we have determined that the areas have met the other requirements for redesignation. The designation status of the areas would remain nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment.

These proposed actions, if finalized, are limited to a determination that the Chicago and Evansville areas have attained the 1997 PM_{2.5} NAAQS. The 1997 PM_{2.5} NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7. The 2006 PM_{2.5} NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA 107(d)(1), for the 2006 PM_{2.5} NAAQS. EPA has not made any designation determinations for the Chicago or Evansville areas based on the 2006 PM_{2.5} NAAQS. These proposed determinations, and any final determinations, will have no effect on, and are not related to, any future designation determination that EPA may make based on the 2006 PM_{2.5} NAAQS for the Chicago or Evansville areas. Conversely, any future designation determination of the Chicago or Evansville areas, based on the 2006 PM_{2.5} NAAQS, will not have any effect on the determinations proposed by this action.

If these proposed determinations are made final and the Chicago and Evansville areas continue to demonstrate attainment with the 1997 PM_{2.5} NAAQS, the requirements for the Chicago and Evansville areas to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS would remain suspended, regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Once the areas are designated for the 2006 NAAQS, they will have to

meet all applicable requirements for that designation.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 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 proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements. 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 proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, 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 proposed 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 proposed 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 proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks” (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determinations of attainment of the fine particle standard for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas, involves proposed determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 16, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E9–23087 Filed 9–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0370; FRL–8962–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Clean Air Interstate Rule; NO_x SIP Call Rule; Amendments to NO_x Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Pennsylvania State Implementation Plan (SIP). The revision addresses the requirements of EPA’s Clean Air Interstate Rule (CAIR) and modifies other requirements in Pennsylvania’s SIP that interact with CAIR including: The termination of Pennsylvania’s NO_x Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement

kilns; provisions for small sources of NO_x in the Pennsylvania portion of the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits. Although the DC Circuit found CAIR to be flawed, the rule was remanded without vacatur and remains in place. Thus, EPA is continuing to take action on CAIR SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind State. CAIR establishes budgets for SO₂ and NO_x for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. In the SIP revision that EPA is proposing to approve, Pennsylvania will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for Pennsylvania. Of note, a final approval action of this SIP revision will result in the automatic withdrawal of the CAIR FIP in Pennsylvania.

DATES: Written comments must be received on or before October 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0370 by one of the following methods:

A. *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0370, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2009-0370. EPA's policy is that all comments received will be included in the public

docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Proposing?

- II. What Is the Regulatory History of CAIR and the CAIR Federal Implementation Plans (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 Pennsylvania's CAIR SIP Submittal
 - A. State Budgets for Allowance Allocations
 - B. CAIR Cap-and-Trade Programs
 - C. Applicability Provisions
 - D. NO_x Allowance Allocations
 - E. Allocation of NO_x Allowances From Compliance Supplement Pool
 - F. Individual Opt-In Units
 - G. Clarifications and Interpretations
 - H. Other Requirements in This SIP Revision
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

EPA is proposing to approve the SIP revision submitted by Pennsylvania on May 23, 2008, as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. The SIP revision also includes provisions that terminate Pennsylvania's NO_x Budget Trading Program under the NO_x SIP Call and establishes emission caps for the non-EGUs that were affected by the NO_x Budget Trading Program. EPA is also proposing to approve revisions that address NO_x ozone season emission reduction requirements for internal combustion engines and cement kilns statewide, and small sources of NO_x in the five counties that comprise the Philadelphia 8-hour ozone nonattainment area, all of which were originally approved as part of the Pennsylvania SIP on September 29, 2006.

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

EPA published CAIR 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 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 or budgets for NO_x for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a 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. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone season 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 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 the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007, a State's CAIR FIPs are automatically withdrawn when EPA approves a SIP revision, in its entirety and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the correspondingly portions of the FIPs are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs

also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (*e.g.*, the methodology for allocating NO_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 additional 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.

On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of "cogeneration unit" and thus the applicability of the CAIR trading program to cogeneration units.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in Pennsylvania.

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. All States are meeting the CAIR requirements through 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 a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x ozone season trading program;
2. Provide for State allocation of NO_x annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of NO_x annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO₂, NO_x annual, or NO_x ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO₂, NO_x annual, or NO_x ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. Analysis of Pennsylvania's CAIR SIP Submittal

Pennsylvania's SIP revision is comprised of amendments to Pennsylvania regulations codified at 25 Pa. Code Chapters 121, 129, and 145. These requirements were adopted by the Commonwealth to implement the requirements of CAIR, terminate the Commonwealth's NO_x Budget Trading Program, require NO_x emission limits for the non-EGUs that were trading sources in the NO_x Budget Trading Program, revise provisions relating to the use of allowances by non-CAIR sources and address provisions related to emission reduction credits. A more detailed discussion of the State's submittal may be found in section C of the TSD.

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 in 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 SO₂ emissions in the CAIR trading program.

In today's action, EPA is proposing to approve Pennsylvania's SIP revision that incorporates by reference the budgets established in the CAIR rules. These budgets are: 99,049 tons for NO_x annual emissions from 2009 through 2014 and 82,541 tons from 2015 and thereafter; 42,171 tons for NO_x ozone season emissions from 2009 through 2014 and 35,143 tons from 2015 and thereafter; and 275,990 tons for SO₂ annual emissions from 2009 through 2014 and 193,193 tons from 2015 and thereafter. These are the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

EPA notes that, in *North Carolina, id.* at 916–21, the Court determined, among other things, that the State SO₂ and NO_x budgets established in CAIR were arbitrary and capricious.¹ However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to “temporarily preserve the environmental values covered by CAIR” pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *Id.* at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina v. EPA*, Case No. 05–1224, DC Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO₂ and NO_x budgets for the CAIR trading programs) in order to “temporarily preserve” the environmental benefits achievable under the CAIR trading programs. *North Carolina*, 550 F.3d at 1178.

B. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season model trading rules 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 model rules are similar, there are some differences. For example, the NO_x annual model rule (but not the NO_x ozone season model rule) 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 model rule 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 model rule 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 model rule are also similar to the provisions of the NO_x annual and ozone season model rules. However, the SO₂ model rule is coordinated with the ongoing Acid Rain SO₂ cap-and-trade program under CAA title IV. The SO₂ model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR 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 also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model 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. The CAIR FIP for Pennsylvania is in place and will be automatically withdrawn upon final approval of this SIP revision.

¹ The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is approving the provisions of Pennsylvania's SIP revision that use the SO₂ and NO_x budgets set in CAIR, EPA is also approving, as discussed below, Pennsylvania's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

Pennsylvania has chosen to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Pennsylvania has adopted a full SIP revision that incorporates by reference the CAIR model cap-and-trade rules for SO₂, NO_x annual, and NO_x ozone season emissions except for the provisions pertaining to: (1) The timing of allocations, (2) the new unit set aside, (3) the priority for issuance of allocations from its State budget, and (4) the establishment of a set aside for certain units.

C. Applicability Provisions

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. Pennsylvania's CAIR rule adopts, by reference, the CAIR model trading rule applicability described in 40 CFR 96.104, 96.204 and 96.304.

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 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.

Pennsylvania has chosen not to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs that participated in the Commonwealth's NO_x Budget Trading Program. Instead, Pennsylvania has adopted new requirements that establish individual emissions caps for these units, as well as an overall statewide emissions cap (*see*, Section V. H., below).

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.

States may establish in their SIP submissions 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
4. The use of allowance set-asides and, if used, their size.

Pennsylvania has chosen to adopt, by reference, the allocation methodology of the model rule for both the NO_x annual and the NO_x ozone season trading programs, as modified within the flexibilities of CAIR. Pennsylvania has chosen to replace with its own requirements the provisions of 40 CFR 96.141, 96.142, 96.341, and 96.342 relating to the distribution of allocations and timing of allocations for the CAIR NO_x annual trading program and the CAIR NO_x ozone season trading program. The SIP revision requires that allowances for 2010 through 2012 will be submitted to the Administrator by April 30, 2008,² allowances for 2013 will be submitted by April 30, 2009, and allowances for each subsequent year will be submitted by April 30 of the year four years prior to the respective control period. While this is different from the model rule provisions, the requirement that allocations be made by the Commonwealth four years in advance of the respective control period meets the CAIR requirements in 40 CFR

51.123(o)(2)(ii)(B) for the NO_x annual trading program and 40 CFR 51.123(aa)(2)(ii)(C) for the NO_x ozone season trading program.

Similarly, the timing for allocation to new units in Pennsylvania is modified. These allocations will be issued for the fifth year after the year the new unit first had NO_x emissions. The SIP revision specifies that by April 30, 2011 and every April 30 thereafter, the allowance allocation for new units will be submitted to the Administrator. This meets the CAIR timing requirements in 40 CFR 51.123(o)(2)(ii)(C) for the NO_x annual trading program and 40 CFR 51.123(aa)(2)(iii)(D) for the NO_x ozone season trading program, which require that EPA be notified of the amount of allowances to be allocated to new units by October 31 and July 31 of the year of the allocation for the NO_x annual trading program and the NO_x ozone season trading program, respectively.

Also, Pennsylvania has chosen not to use a "set-aside" for allocations to new units. Instead, existing units, new units, and qualifying resources will be allocated from the same allowance pool. Allocation priority is given to new units, after which existing units and qualifying resources will receive allocations. New unit allowance allocations will be published, and opportunity for public comment provided, by March 31, 2011 and March 31 every year thereafter. The allocation to new units will be based on the previous year's emissions. Allowance allocations will be of a vintage year five years later than the year in which the emissions were generated. A new unit may also receive an allocation based on qualifying converted baseline heat input for existing units, with concurrent allocations continuing each year until the new unit no longer qualifies for new unit allocations. The new unit will no longer qualify as a new unit five years after the unit's first NO_x emissions. After five years, the unit will have transitioned into regular unit status and will no longer be eligible for new unit allocations. Since the new units will receive future year allowances (vintage five years later than the year the emissions were generated) until the unit no longer qualifies as a new unit, the owners and/or operators of the new unit will need to obtain current or prior year (banked) allowances to comply with the current year compliance obligations.

Pennsylvania has chosen this methodology to avoid oversubscription of the set-aside (in which case allowances are prorated and new units do not receive all of its requested allowances), allow new sources to be integrated into the allowance pool, and

² Because the Pennsylvania CAIR SIP was not in effect at the time, the 2009 allocations for sources in Pennsylvania were issued under the FIP.

Allocations beginning with vintage year 2010 will be issued in accordance with the Commonwealth's CAIR SIP when finally approved.

allow energy efficiency/renewable energy resources a share of allowances allocated from the Commonwealth's budget. CAIR NO_x annual and CAIR NO_x ozone season allocations for new units in Pennsylvania were allocated under the CAIR NO_x Annual and CAIR NO_x Ozone Season FIP for the 2009 control periods.

Pennsylvania has chosen to allocate CAIR NO_x annual and CAIR NO_x ozone season allowances to renewable energy qualifying resources or demand side management energy efficiency qualifying resources. Pennsylvania will determine the allocation of CAIR NO_x annual and CAIR NO_x ozone season allowances based on conversion of the certified quantity of electrical energy production, useful thermal energy, and the energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. The equivalent thermal energy will be the unit's baseline heat input for determining the allowance allocations.

Finally, Pennsylvania has chosen to allocate up to 1.3 percent of its CAIR NO_x annual trading budget in each control period to certain facilities that were exempted from the Acid Rain Program (*see* CAA Section 405(g)(6)(A), 42 U.S.C. 7651d(g)(6)(A)). Because they were not subject to the Acid Rain Program, they received no SO₂ allowances under that program. (Acid Rain Program allowances are used for SO₂ compliance in CAIR.) These facilities are subject to CAIR and receive NO_x annual allowances and NO_x ozone season allowances. The additional NO_x allowances are distributed to these facilities for each control period beginning in 2010 until 2015.

E. Allocation of NO_x Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide 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 projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_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 annual NO_x model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Pennsylvania sources are subject to the CAIR FIP for 2009 and CSP allowances will be distributed under those provisions.

F. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (*i.e.*, boilers, combustion turbines, and other stationary fossil-fuel-fired combustion devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Pennsylvania has chosen to adopt, by reference, the provisions of the model rule allowing opt-ins for the NO_x annual, NO_x ozone season, and SO₂ annual trading programs.

G. Clarifications and Interpretations

Use of "Future" Unallocated Allowances To Correct Any Errors in Allocations

Sections 145.212(g) and 145.222(g) allow the use of "future" allowances that have not been allocated to correct errors in past allocation. EPA is

proposing to approve this revision to the Pennsylvania SIP with the understanding that provisions in sections 145.212(g) and 145.222(g) impacting "future" allowances that have not been allocated would rarely be implemented. EPA understands that any corrections to the allocations would be based on calculation errors and would not be routine. EPA understands that correcting errors in allowance allocations would be unlikely since the data that is used to determine allowance allocations is based on past emissions, heat input, electrical energy production, or useful thermal energy and not on data projections. EPA understands that any correction to the "future" allowance allocation under these provisions would not occur after the allowances have been recorded by the Administrator.

H. Other Requirements in This SIP Revision

1. Use of CAIR Allowances for Non-CAIR Sources, Sections 129.201, 129.202, 129.204, Sections 145.113, 145.143

These provisions apply to sources not regulated by Pennsylvania's CAIR program. Currently, owners and operators of small sources of NO_x in the five counties that comprise the Pennsylvania portion of the Philadelphia 8-hour ozone non-attainment area are subject to emission limits that, if exceeded, require them to surrender NO_x SIP Call allowances to the Commonwealth. These provisions were approved by EPA into the Pennsylvania SIP on September 29, 2006 (71 FR 57428). Similarly, large stationary internal combustion engines and large cement kilns that are subject to the NO_x SIP Call are required to surrender NO_x SIP Call allowances to the Commonwealth if they exceed their NO_x emission limits. Because the NO_x SIP Call trading program has been discontinued and NO_x SIP Call allowances have been converted to CAIR NO_x ozone season allowances, these rules were modified to instead require CAIR NO_x ozone season allowance and CAIR NO_x allowance surrenders for emission limit exceedances.

EPA is proposing to approve this SIP revision with the understanding that the impact of these surrendered allowances on the overall CAIR market will be minimal. Since these provisions were originally adopted by the Commonwealth, the number of NO_x SIP Call allowances surrendered have been less than one percent of the Commonwealth's total CAIR NO_x ozone season budget, and would likely

continue to be minimal in the CAIR trading program (*See* TSD at (C)(4)).

2. Chapter 145, Subchapter A, NO_x Budget Trading Program; Section 145.8 “Transition to CAIR NO_x Trading Programs”

EPA will not administer the NO_x Budget Trading Program after the 2008 ozone season. The provisions in section 145.8(a) establish 2008 as the final year for NO_x allowance allocations under Chapter 145, subchapter A, NO_x Budget Trading Program. Allocations for 2009 will be made in accordance with the CAIR NO_x Ozone Season FIP. The CAIR NO_x ozone season allowance allocations for the control period starting May 1, 2010, and for each control period thereafter, will be distributed in accordance with Chapter 145, Subchapter D, CAIR NO_x Trading Programs once Pennsylvania’s CAIR SIP is finally approved. Under section 145.8(b), any allowances already allocated for 2009 or later under the NO_x Budget Trading Program are terminated. EPA understands that, under this provision and section 145.8(c), all allowances for these years under the NO_x Budget Trading Program are terminated or retired.

Section 145.8(c) terminates the requirements of the NO_x Budget Trading Program by replacing that program’s emissions limitations and monitoring requirements related to the 2010 ozone season (which starts on May 1, 2010) by the CAIR trading program’s emissions limitations and monitoring and other requirements related to that ozone season. This section also converts leftover NO_x Budget Trading Program allowances to CAIR NO_x ozone season allowances and provides excess emission procedures for the final year of the NO_x Budget Trading Program. In summary, this section clarifies that: For the 2008 ozone season, Pennsylvania’s NO_x Budget Trading Program applies; for the 2009 ozone season, the CAIR FIP applies; and beginning with the 2010 ozone season, Pennsylvania’s CAIR NO_x ozone season trading program applies.

Because Pennsylvania has chosen not to expand its CAIR NO_x ozone season trading program to include non-EGUs that were subject to the State’s NO_x Budget Trading Program, Pennsylvania is required to meet 40 CFR 51.121(f)(2) and (i)(4). These provisions require either a NO_x mass emissions cap on each source, NO_x emissions rate limit on each source assuming maximum operating capacity for purposes of estimating mass NO_x emissions, or any other regulatory requirement that can provide emission reductions from those sources to meet the 2007 ozone season

NO_x budgets established under the NO_x SIP Call. A State must also impose enforceable mechanisms to assure that collectively all such sources, including new or modified units, will not exceed the total ozone season NO_x budget. Pursuant to 40 CFR 51.121(i)(4), these sources must also comply with the monitoring provisions of 40 CFR part 75, subpart H.

Pennsylvania has added new section 145.8(d) to address requirements of units subject to the NO_x Budget Trading Program, but not subject to the CAIR NO_x Ozone Season trading Program. Beginning with the 2009 ozone season, these units will be required to meet an emissions cap and to continue monitoring using 40 CFR part 75 (required through compliance with 40 CFR part 96, Subpart HHHH and related subparts incorporated by reference). Pennsylvania’s non-EGU NO_x ozone season emissions trading budget under the NO_x SIP Call totals 3,619 tons of NO_x. Pennsylvania uses 3,438 tons as a State-wide ozone season emission limitation for these units. Each unit has an allowable emission rate, calculated by January 31 of each year, based on the previous season’s heat input. If the combined NO_x ozone season emissions from all the units subject to section 145.8(d) exceed the statewide ozone season emission limit (3,438 tons), the units that exceed their individual allowable emissions for that ozone season must surrender to the Commonwealth one CAIR NO_x ozone season allowance and one CAIR NO_x annual allowance for each ton of emissions over its allowable emission limit. The Commonwealth has set aside 181 tons of the non-EGU budget, including tons that will be retired each year to compensate for sources that were exempted under the “twenty-five ton exemption” in section 145.4(b)³. The balance of tons remaining in the set aside is available to the Pennsylvania Department of Environmental Protection annually for accounting corrections. EPA understands that any unused amount from this set aside would be retired by the Commonwealth each year.

It is unlikely that the statewide NO_x ozone season emission limitation (3,438 tons) will be exceeded. Pennsylvania’s non-EGU sources’ total emissions during each of the years they were trading under the NO_x Budget Trading

Program have never exceeded Pennsylvania’s total non-EGU trading budget (3,619 tons) or the statewide NO_x ozone season emission limitation (3,438 tons) (*See* TSD at (C)(4)). Therefore, the provision that the non-EGUs (that were formerly trading sources under the NO_x Budget Trading Program) surrender CAIR allowances when the statewide NO_x Ozone season emission limitation budget is exceeded is unlikely to be invoked.

Included in Subchapter D are provisions that integrate emission reduction credits (ERCs) under new source review with CAIR allowances. The provisions require that to the extent a CAIR unit is reducing its NO_x emissions and generating emission reduction credits for use by another source to meet new source review requirements, the CAIR NO_x annual and ozone season budgets must be reduced an amount equal to the ERCs. In years for which allowances have already been allocated, allowances must be surrendered by the owner or operator of the CAIR unit generating the ERC in order to reduce the budgets. In years for which allowances have not yet been recorded, the budgets will be reduced before allowances are recorded and distributed.

EPA expects that the amount of allowances removed from the CAIR budgets as a result of these provisions would likely be minimal. EPA is therefore proposing to approve these provisions.

VI. Proposed Action

EPA is proposing to approve Pennsylvania’s full CAIR SIP revision submitted on May 23, 2008. The SIP revision meets the applicable requirements of CAIR, set forth in 40 CFR 51.123(o) and (aa), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(o), with regard to SO₂ emissions. EPA is also proposing to approve revisions to other Pennsylvania regulations submitted as part of this SIP revision as discussed in this notice. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act.

³ Sources that were exempted under the “25 ton exemption” provisions of the NO_x Budget Trading Program must continue to have the same Federally enforceable permits limits (as were required under the NO_x Budget Trading Program), including restricting the units to burning only natural gas or fuel oil and NO_x emissions to 25 tons or less in a control period.

Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of the Pennsylvania SIP revision to meet the requirements of CAIR and transition from the NO_x Budget Program does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 15, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–23052 Filed 9–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0293; FRL–8961–7]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Lead (Pb) Maintenance Plan Update for Marion County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Indiana Department of Environmental Management (IDEM) on April 1, 2009, to revise the Indiana State Implementation Plan (SIP) for lead (Pb). The State has submitted an update to its Pb maintenance plan for Marion County for continued attainment of the 1.5 micrograms per cubic meter (µg/m³) National Ambient Air Quality Standard (NAAQS) promulgated in 1978. This update satisfies section 175A of the Clean Air Act (CAA), and is in accordance with EPA’s May 10, 2000 approval of the State’s Redesignation Request and Maintenance Plan for the Marion County Pb nonattainment areas. Additionally, this Pb maintenance plan satisfies the requirements for maintenance plans contained in the September 4, 1992 EPA memorandum entitled “Procedures for Processing Requests to Redesignate Areas to Attainment.”

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0293, 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) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State’s SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 14, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–22918 Filed 9–23–09; 8:45 am]

BILLING CODE 6560–50–P