

*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 is not economically significant.

*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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 30, 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 in 40 CFR Part 52**

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

Dated: September 17, 2007.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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 P—Indiana**

■ 2. Section 52.770 is amended by adding paragraph (c)(184) to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(184) Indiana Department of Environmental Management submitted amendments to the State Implementation Plan to control nitrogen oxide emissions from internal combustion engines in 326 Indiana Administrative Code (IAC) 10–5 and corrections to 326 IAC 10–3–3 and 326 IAC 10–4 on March 8, 2006.

(i) *Incorporation by reference.* The following sections of the Indiana Administrative Code (IAC) are incorporated by reference.

(A) Title 326: Air Pollution Control Board, Article 10: Nitrogen Oxides Rules, Rule 3: Nitrogen Oxide Reduction Program for Specific Source Categories, Section 3: Emissions limits. Filed with the Secretary of State on January 27, 2006, effective February 26, 2006. Published in the Indiana Register on March 1, 2006 (29 IR 1876).

(B) Title 326: Air Pollution Control Board, Article 10: Nitrogen Oxides Rules, Rule 4: Nitrogen Oxides Budget Trading Program, Section 1: Applicability, Section 2: Definitions, Section 3: Retired unit exemption, Section 9: NO<sub>x</sub> allowance allocations, Section 13: Individual opt-ins, Section 14: NO<sub>x</sub> allowance banking, and Section 15: Compliance supplement pool. Filed with the Secretary of State on January

27, 2006, effective February 26, 2006. Published in the Indiana Register on March 1, 2006 (29 IR 1877).

(C) Title 326: Air Pollution Control Board, Article 10: Nitrogen Oxides Rules, Rule 5: Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE). Filed with the Secretary of State on January 27, 2006, effective February 26, 2006. Published in the Indiana Register on March 1, 2006 (29 IR 1899).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 97**

[EPA–R02–OAR–2007–0233; FRL–8472–5]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to New Jersey's State Implementation Plan (SIP) submitted on February 6, 2007, and subsequently revised on July 9, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), and the CAIR Federal Implementation Plan (CAIR FIP) concerning SO<sub>2</sub>, NO<sub>x</sub> annual, NO<sub>x</sub> ozone season emissions for the State of New Jersey. The SIP revision that EPA is fully approving is an "abbreviated" SIP revision that addresses the methodology to be used to allocate annual and ozone season NO<sub>x</sub> allowances under the CAIR FIPs. The SIP revision that EPA is approving will also satisfy New Jersey's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note approval of New Jersey's SIP revision.

**DATES:** This rule is effective on October 31, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2007–0233. All documents in the docket are available online at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

**FOR FURTHER INFORMATION CONTACT:** For information, contact Mr. Kenneth Fradkin, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, phone number (212) 637-3702 or by e-mail at: [fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

##### ***CAIR SIP and 110(a)(2)(D)(i) Approval***

EPA is taking final action to approve a revision to New Jersey's SIP, submitted on February 6, 2007, as revised. In response to EPA's comments provided during New Jersey's rulemaking and in the proposed approval, New Jersey adopted new rules regarding the Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Trading Program on June 19, 2007. The State submitted these rules to EPA on July 9, 2007. The adoption was published in the New Jersey Register on July 16, 2007 (39 N.J.R. 2637(a)). The SIP revision modifies the application of certain provisions of the CAIR FIPs that require emission reductions of SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. This less comprehensive CAIR SIP is termed an abbreviated SIP. This revision includes a new regulation, N.J.A.C. 7:27-30, Clean Air Interstate

Rule (CAIR) NO<sub>x</sub> Trading Program. As part of the revision, New Jersey has also adopted N.J.A.C. 7:27-31.23 to provide the date when New Jersey's CAIR NO<sub>x</sub> Trading Program will replace New Jersey's NO<sub>x</sub> Budget Trading Program (Subchapter 31). New Jersey has also adopted "7:27A-3.10 Civil administrative penalties for violation of the rules adopted pursuant to the Act."

New Jersey is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain Electric Generating Units (EGUs) to participate in the EPA-administered Federal CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs. The CAIR FIPs provide that this methodology, upon approval by EPA, will be used to allocate NO<sub>x</sub> allowances to sources in New Jersey, instead of the federal allocation methodology otherwise provided in the FIPs. The SIP revision also retires rather than allocates allowances from the NO<sub>x</sub> annual Compliance Supplement Pool (CSP).

EPA has determined that New Jersey's CAIR NO<sub>x</sub> Trading Program, as finalized in the New Jersey Register on July 16, 2007 ((39 N.J.R. 2637(a)), satisfies the applicable requirements for an abbreviated CAIR SIP revision. Consistent with the flexibility provided in the FIPs, the provisions of New Jersey's CAIR NO<sub>x</sub> Trading Program will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for New Jersey. EPA will not make any changes to the CAIR FIP, but will amend the appropriate appendices in the CAIR FIP trading rules simply to note approval of the New Jersey CAIR NO<sub>x</sub> Trading Program.

EPA is also approving "N.J.A.C. 7:27-31.23 Replacement of the NO<sub>x</sub> Budget Program" which establishes a transition date for the replacement of the State's NO<sub>x</sub> Budget Program (Subchapter 31), beginning with the 2009 control period, with the New Jersey CAIR program.

In addition, EPA is also approving a revision to New Jersey's SIP to address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA). This section of the CAA requires each state to submit a SIP that contains adequate provisions to prohibit sources in the state from emitting any air pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air

quality, and (4) interfere with efforts to protect visibility.

On July 3, 2007, EPA proposed full approval of New Jersey's SIP revision provided that New Jersey's final rule was consistent with the modifications provided in EPA's comments during rulemaking and in its proposal (72 FR 36406). EPA has determined that New Jersey's revised CAIR rule, adopted June 19, 2007, has addressed the concerns, discussed in its comments during rulemaking and in the proposed approval, regarding shutdown units, correction of allocations to new and existing units, and prorating for the New Source/Growth Reserve. The comment period for the EPA proposal closed on August 2, 2007. No comments were received. EPA is finalizing full approval based on the rationale stated in the proposal and in this final action.

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

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 states and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind states in the eastern part of the country. As a result, EPA required those upwind states to revise their SIPs to include control measures that reduce emissions of SO<sub>2</sub>, which is a precursor to PM<sub>2.5</sub> formation, and/or NO<sub>x</sub>, which is a precursor to both ozone and PM<sub>2.5</sub> formation. For jurisdictions that contribute significantly to downwind PM<sub>2.5</sub> nonattainment, CAIR sets annual state-wide emission reduction requirements (i.e., budgets) for SO<sub>2</sub> and annual state-wide emission reduction requirements for NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets state-wide emission reduction requirements for NO<sub>x</sub> for the ozone season (May 1st to September 30th). Under CAIR, states may implement these 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 CAA with regard to interstate transport with respect to the 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA made national findings, effective May 25, 2005, that the subject 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<sub>2.5</sub> NAAQS. These May 25, 2005 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 August 17, 2006, EPA issued guidance for SIP submissions states should make to address the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and PM<sub>2.5</sub> NAAQS.

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 SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone-season model trading programs, as appropriate. The CAIR FIP SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the 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 (SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season) in all states covered by a 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<sub>x</sub> allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published CAIR-related final rules that added the states of Delaware and New Jersey to the list of states subject to CAIR for PM<sub>2.5</sub>.

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

CAIR establishes state-wide emission budgets for SO<sub>2</sub> and NO<sub>x</sub> and is to be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009 and continues through 2014, while the first phase of SO<sub>2</sub> reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by

either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs, or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO<sub>2</sub> and NO<sub>x</sub> budgets.

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

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO<sub>x</sub> SIP Call trading programs in their CAIR NO<sub>x</sub> ozone season trading programs.

#### IV. What Is the Result of EPA's Evaluation of New Jersey's CAIR SIP Submittal?

##### A. State Budgets for Allowance Allocations

The CAIR FIP established the EGU budgets for New Jersey as 12,670 tons for the years 2009–2014 (Phase I) and 10,558 tons for the years 2015 and beyond (Phase II) for NO<sub>x</sub> annual emissions; 6,654 tons for the years 2009–2014 (Phase I) and 5,545 tons for the years 2015 and beyond (Phase II) for NO<sub>x</sub> ozone season emissions; and 32,392 tons for the years 2010–2014 (Phase I) and 22,674 tons for the years 2015 and beyond (Phase II) for SO<sub>2</sub> emissions. New Jersey's SIP revision does not affect these budgets, which are the total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade program under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

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

The CAIR NO<sub>x</sub> annual and ozone-season FIPs 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 FIPs are similar, there are some differences. For example, the NO<sub>x</sub> annual FIP (but not the NO<sub>x</sub> ozone season FIP) provides for a Compliance Supplement Pool (CSP), discussed below, under which

allowances may be awarded for early reductions of NO<sub>x</sub> annual emissions. As a further example, the NO<sub>x</sub> ozone season FIP reflects the fact that the CAIR NO<sub>x</sub> ozone season trading program replaces the NO<sub>x</sub> SIP Call trading program for EGUs after the 2008 ozone season and is coordinated with the NO<sub>x</sub> SIP Call program. States also have the option of continuing to meet their NO<sub>x</sub> SIP Call non-EGU reduction obligations 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 addition, the NO<sub>x</sub> ozone season FIP 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.

The provisions of the CAIR SO<sub>2</sub> FIP are also similar to the provisions of the NO<sub>x</sub> annual and ozone season FIPs. However, the SO<sub>2</sub> FIP is coordinated with the ongoing Acid Rain SO<sub>2</sub> cap-and-trade program under CAA title IV. The SO<sub>2</sub> 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 SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO<sub>2</sub> cap-and-trade program.

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 SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs.

New Jersey is subject to the CAIR FIPs for ozone and PM<sub>2.5</sub> and the CAIR FIP trading programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season apply to sources in New Jersey. Consistent with the flexibility it gives 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 submission by New Jersey on February 6, 2007, as subsequently revised and submitted on

July 9, 2007, is such an abbreviated SIP revision.

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

States have the option of bringing in, for the CAIR NO<sub>x</sub> ozone season program only, those units in a state's NO<sub>x</sub> SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to 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<sub>x</sub> SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO<sub>x</sub> ozone season trading program all units required to be in the State's NO<sub>x</sub> SIP Call trading program that are not already included under 40 CFR 96.304. 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.

Consistent with the flexibility given to states in the CAIR FIP, New Jersey has chosen not to expand the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include all non-EGUs in the State's NO<sub>x</sub> SIP Call trading program. New Jersey's non-EGUs and small electric generating units (EGUs) will be subject to Reasonable Available Control Technology (RACT) or state of the art rules.

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

Under the NO<sub>x</sub> allowance allocation methodology in the CAIR model trading rules and in the CAIR FIPs, NO<sub>x</sub> annual and NO<sub>x</sub> ozone season allowances are allocated to units that have operated at least for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIPs also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions. The CAIR FIPs provide states the flexibility to establish a different NO<sub>x</sub> allowance allocation methodology that will be used to allocate allowances to sources in the states if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period.

New Jersey has chosen to replace the provisions of the CAIR NO<sub>x</sub> annual and ozone season FIP concerning allowance allocations with its own methodology. New Jersey will distribute NO<sub>x</sub> annual and ozone season allowances to CAIR units based upon historical electrical and thermal output. Allowances will be distributed and not auctioned. The distribution of allowances will be based on the previous three years of data. New Jersey has established set-asides for new source/growth ("New Source/Growth Reserve"), and energy efficiency and renewable energy programs or techniques ("Incentive Reserve"). Each year, New Jersey is allocating ten percent of the State's CAIR NO<sub>x</sub> annual and CAIR NO<sub>x</sub> ozone season budgets to the New Source/Growth Reserve, and five percent of the State's CAIR NO<sub>x</sub> annual and CAIR NO<sub>x</sub> ozone season budgets to the Incentive Reserve. Additional details regarding New Jersey's NO<sub>x</sub> allocation methodology can be found in EPA's proposal to approve New Jersey's SIP revision, which was published in the **Federal Register** on July 3, 2007 (72 FR 36406).

In the proposal published on July 3, 2007, EPA stated that several provisions of New Jersey's NO<sub>x</sub> allocation proposal were inconsistent with the NO<sub>x</sub> allocation timing requirements of the abbreviated SIP revision requirements and the CAIR FIP trading programs. EPA further stated that full approval of New Jersey's proposed regulation was contingent upon New Jersey modifying their proposed rule in order to clarify that EPA's NO<sub>x</sub> allocation timing requirements will be met under New Jersey's program. Sections 51.123(p)(1)(ii)(B) and (ee)(2)(ii)(C) of CAIR require that the State determines and notifies the Administrator of each existing unit's allowance allocation at least 3 years in advance of the CAIR FIP NO<sub>x</sub> annual and ozone season programs. Sections 51.123(p)(1)(ii)(C) and (ee)(2)(ii)(D) require that the state determines, and notifies the Administrator of each new unit's allowances by October 31 (for the CAIR NO<sub>x</sub> annual trading program) or July 31 (for the CAIR NO<sub>x</sub> ozone season trading program) of the year for which the allowances are being allocated.

As we indicated in our July 3, 2007 proposal, New Jersey's proposed regulation did not meet NO<sub>x</sub> allocation timing requirements for existing or new units that must surrender and transfer allowances to EPA for retirement for the year in which the unit shuts down and any year thereafter. As written in New Jersey's proposed rule, the owner or operator of an existing unit that is required to surrender allowances will

no longer be able to buy or sell allowances, or undertake other allowance market activities, that were provided three years in advance and already recorded into their compliance account. EPA indicated that it was not clear from New Jersey's proposal what the timing would be for surrendering the allowances, and whether the State intended for recorded allowances to be surrendered.

In response to EPA's comment, New Jersey modified its rule concerning allocations for shutdown units. EPA has determined that the modification is acceptable because it terminates future allocations once a unit is permanently shut down, but does not take back any allowances that were previously allocated to the unit.

EPA also indicated, in our July 3, 2007 proposal, that New Jersey's regulation as proposed did not meet NO<sub>x</sub> allocation timing requirements with regard to the provision in New Jersey's rule that provides the state may determine that existing (or new) units for current or past years had been erroneously allocated too many or too few allowances based on inaccurate data or projections. As written in the proposed rule, it was unclear how long after determination and recordation of an allocation New Jersey may determine that the allocation was incorrect.

In response to EPA's comment, New Jersey modified its rule concerning the correction of allocations for existing and new units. EPA has determined that the modification is acceptable because it allows corrections only before, and not after, the EPA Administrator records the allocations. This removes the potential for taking back units' allocations after recordation.

EPA also indicated in our July 3, 2007 proposal that New Jersey's proposed rule also provided that if the sum of new unit allocations (determined by October 31 or July 31 of the year for which allocations are made) and the existing unit growth allocations (determined by the end of the year for which allocations are made) exceeded the total amount of the New Source/Growth Reserve for the year, all the allocations from the reserve will be reduced on a pro-rata basis so that the total amount allocated to these new and existing units does not exceed the reserve. We stated that New Jersey should clarify that the allocation-proration provisions will be applied to new unit allocations before the October 31 deadline for NO<sub>x</sub> annual submission, or before the July 31 deadline for the NO<sub>x</sub> ozone season submission of new unit allocations to EPA and applied to the existing unit growth allocations

before the March 1 deadline for submission of those allocations to EPA.

New Jersey modified the proposed rule concerning allocations from the New Source/Growth Reserve so that the application of pro-rata distribution of such allocations is performed separately for new units and for existing units with growth and the process for new units is performed before new-unit allowances are allocated. EPA has determined that the modification is acceptable because it removes the potential for take back of new units' allocations.

EPA is taking final action to approve New Jersey's methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> annual and NO<sub>x</sub> ozone season trading programs because the methodology is consistent with the flexibility that CAIR provides states with regard to allocation methodologies.

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

The Compliance Supplement Pool (CSP) provides an incentive for early reductions in NO<sub>x</sub> annual emissions. The CSP consists of 200,000 CAIR NO<sub>x</sub> annual allowances 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. The CAIR NO<sub>x</sub> annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states. EPA had allocated to New Jersey allowances equal to 660 tons of NO<sub>x</sub> annual emissions for possible distribution.

New Jersey has chosen to modify the provisions of the CAIR NO<sub>x</sub> annual FIP concerning the allocation of allowances from the CSP. New Jersey has chosen to retire all of the CSP allowances budgeted for New Jersey by not allocating them to CAIR units. EPA is taking final action to approve New Jersey's retirement of the CSP allowances budgeted to New Jersey since this is consistent with the flexibility provided to states under CAIR.

#### *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.

New Jersey has chosen not to allow non-EGUs meeting the FIP specified requirements to participate in the CAIR NO<sub>x</sub> annual trading program, the CAIR NO<sub>x</sub> ozone season trading program, and the SO<sub>2</sub> trading program.

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

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

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section

110(a)(2)(D)(i). As discussed below, New Jersey's SIP revision with respect to the statutory requirements is consistent with the guidance.

New Jersey addresses the first two of these four elements by complying with the requirements of CAIR. New Jersey satisfies these requirements either by relying on the existing CAIR FIPs, or through approval of this SIP revision.

The third element New Jersey addresses is prevention of significant deterioration (PSD). In accordance with the guidance issued on August 15, 2006, states may continue to rely on their existing Nonattainment New Source Review (NNSR) and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent states. For 8-hour ozone, the state has met the obligation by confirming that the existing ozone Nonattainment New Source Review (NNSR) permitting program remains in effect and applies to the 8-hour ozone NAAQS for the State's major stationary sources. New Jersey has noted that the State's current NNSR program retains the lower applicability levels and higher off-set ratios previously required under the states 1-hour ozone classification. EPA anticipates that the state will adopt a final attainment demonstration for the 8-hour ozone NAAQS by September 8, 2007. For PM<sub>2.5</sub>, the State has confirmed that the state's NNSR and PSD programs are being implemented in accordance with EPA's interim guidance calling for the use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub>. New Jersey commits to revising its NNSR program and adopting a PSD program after EPA finalizes its PM<sub>2.5</sub> implementation rule.

It should be noted that the entire State of New Jersey is nonattainment for 8-hour ozone, necessitating only a NNSR program (not PSD) for ozone. For PM<sub>2.5</sub> the State has both attainment and non-attainment areas, necessitating both NNSR and PSD programs for PM<sub>2.5</sub>.

Consistent with EPA's August 15, 2006 guidance, at this time, it is impossible for New Jersey to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. New Jersey has indicated that it will address the visibility protection requirements once the regional haze SIP is completed and submitted to EPA in December of 2007.

EPA is taking final action finding that the SIP revision adequately addresses the required elements of 110(a)(2)(D)(i) with the exception of the requirement to protect visibility. This requirement will be re-evaluated after the regional haze

SIP is completed and submitted to EPA in December 2007.

## V. Final Action

EPA is taking final action to fully approve New Jersey's abbreviated SIP revision submitted on February 6, 2007, and subsequently revised on July 9, 2007. New Jersey is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade for SO<sub>2</sub>, NO<sub>x</sub> annual, NO<sub>x</sub> ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIPs, New Jersey has adopted under N.J.A.C. 7:27–30, the CAIR NO<sub>x</sub> Trading Program, provisions for allocating allowances under the CAIR FIP NO<sub>x</sub> annual and ozone season trading programs. In addition, New Jersey has also adopted at N.J.A.C. 7:27–31.23 the date when New Jersey's CAIR NO<sub>x</sub> Trading Program will replace New Jersey's NO<sub>x</sub> Budget Trading Program (Subchapter 31). New Jersey has also adopted in the abbreviated SIP revision provisions that retire CSP allowances. As provided for in the CAIR FIPs, New Jersey provisions for allocating NO<sub>x</sub> annual and ozone season allowances and for retiring CSP allowances, will replace or supplement the corresponding provisions of the CAIR FIPs in New Jersey. EPA has determined that New Jersey's abbreviated CAIR SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee) with regard to NO<sub>x</sub> annual and NO<sub>x</sub> ozone season emissions. EPA is not making changes to the CAIR FIP, but is amending the appropriate appendices of 40 CFR part 97 in the CAIR FIP trading rules simply to note approval of New Jersey's SIP revision.

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

## 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 would impose 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). 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 CAA. 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 CAA. 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 CAA. 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. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 30, 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, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 18, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ 40 CFR parts 52 and 97 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 FF—New Jersey**

■ 2. Section 52.1570 is amended by adding new paragraph (c)(83) to read as follows:

**§ 52.1570 Identification of plans.**

\* \* \* \* \*

(c) \* \* \*

(83) Revisions to the State Implementation Plan and submitted on February 6, 2007 as proposed, and subsequently adopted and submitted on July 9, 2007 by the State of New Jersey Department of Environmental Protection (NJDEP) that establishes rules for the allowance allocation of oxides of nitrogen (NO<sub>x</sub>) for the annual and ozone season Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Cap and Trade Programs. The submission also establishes a date when

the CAIR NO<sub>x</sub> Trading Programs will replace the State's NO<sub>x</sub> Budget Program, and satisfies New Jersey's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport.

(i) Incorporation by reference:

(A) Title 7, Chapter 27, Subchapter 30 of the New Jersey Administrative Code entitled "Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Trading Program," effective July 16, 2007 and Title 7, Chapter 27, Subchapter 31, Section 23 of the New Jersey Administrative Code entitled "NO<sub>x</sub> Budget Program," effective July 16, 2007.

(ii) Additional information:

(A) February 2, 2007 letter from Commissioner Lisa P. Jackson, NJDEP,

to Alan J. Steinberg, EPA, submitting proposed SIP revision, and request for parallel processing.

(B) June 26, 2007 letter from Commissioner Lisa P. Jackson, NJDEP, to Alan J. Steinberg, EPA, submitting SIP revision.

(C) December 29, 2006 letter from Commissioner Lisa P. Jackson, NJDEP, to Alan J. Steinberg, EPA, indicating how New Jersey has addressed the required elements of 110(a)(2)(D)(i).

■ 3. In 52.1605, the table is amended by adding an entry for Subchapter 30 and revising the entry for Subchapter 31 under the heading "Title 7, Chapter 27" to read as follows:

**§ 52.1605 EPA-approved New Jersey regulations.**

| State regulation                                                                   | State effective date | EPA approved date                          | Comments  |
|------------------------------------------------------------------------------------|----------------------|--------------------------------------------|-----------|
| * * * * *                                                                          | * * * * *            | * * * * *                                  | * * * * * |
| <b>Title 7, Chapter 27</b>                                                         |                      |                                            |           |
| * * * * *                                                                          | * * * * *            | * * * * *                                  | * * * * * |
| Subchapter 30, "Clean Air Interstate Rule (CAIR) NO <sub>x</sub> Trading Program." | July 16, 2007 .....  | October 1, 2007 [Insert FR page citation]. |           |
| Subchapter 31, "NO <sub>x</sub> Budget Program."                                   | July 16, 2007 .....  | October 1, 2007 [Insert FR page citation]. |           |
| * * * * *                                                                          | * * * * *            | * * * * *                                  | * * * * * |

**PART 97—[AMENDED]**

■ 1. 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.*

■ 2. Appendix A to Subpart EE is amended by adding the entry for "New Jersey" in alphabetical order 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. \* \* \*

New Jersey

2. \* \* \*

New Jersey

■ 3. Appendix A to Subpart EEEE is amended by adding the entry for "New Jersey" in alphabetical order under the introductory text to read as follows:

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

\* \* \* \* \*

New Jersey

[FR Doc. E7-19216 Filed 9-28-07; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 418**

[CMS-1539-CN]

**RIN 0938-A072**

**Medicare Program; Hospice Wage Index for Fiscal Year 2008 Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects typographical errors that appeared in

the final rule published in the August 31, 2007 **Federal Register** entitled "Medicare Program; Hospice Wage Index for Fiscal Year 2008."

**DATES:** *Effective Date:* These corrections are effective on October 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Terri Deutsch, (410) 786-9462.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 07-4292 of August 31, 2007 (72 FR 50214), there were errors that are identified and corrected in "Section III Correction of Errors". The provisions in this correction notice are effective as if they had been included in the August 31, 2007 final rule. Accordingly, these corrections are effective October 1, 2007.

**II. Summary of Errors**

Table A of the Addendum lists the fiscal year (FY) 2008 urban wage index values for hospice providers by Core-Based Statistical Areas (CBSA) designations. To ensure that hospice providers are able to identify their FY 2008 wage index value, table A contains the CBSA codes, CBSA county name