

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. If we do not receive any comments, this action will be effective January 28, 2011.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this 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 CAA; 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 rule 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.

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 action 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 January 28, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 15, 2010.

**Susan Hedman,**

*Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (ff)(11) to read as follows:

#### § 52.1885 Control strategy: Ozone.

\* \* \* \* \*

(ff) \* \* \*

(11) Approval—On July 6, 2010, the Ohio Environmental Protection Agency submitted a request to revise the maintenance plan for the Ohio portion of the Cincinnati-Hamilton, OH-KY-IN 8-hour ozone area. The submittal revises 2015 and 2020 NO<sub>x</sub> point source emissions projections for Butler County.

\* \* \* \* \*

[FR Doc. 2010-29784 Filed 11-26-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R05-OAR-2009-0515; FRL-9232-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Clean Air Interstate Rule

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a request submitted by the Indiana Department of Environmental Management (IDEM) on June 29, 2009, to revise the Indiana State Implementation Plan (SIP) under the Clean Air Act (CAA). The State has submitted amendments to the Indiana Administrative Code (IAC), which supplement Indiana's Clean Air Interstate Rule (CAIR), for which EPA granted limited approval as an abbreviated SIP on October 22, 2007. The abbreviated SIP was to be implemented in conjunction with a Federal Implementation Plan (FIP) that specified requirements for emissions monitoring, permit provisions, and other elements of CAIR programs. The State's June 29, 2009, submittal includes elements that EPA deems necessary in order for EPA to fully approve Indiana's CAIR SIP. This will allow a transition from an abbreviated SIP with limited approval to a full SIP with full approval under which the various CAIR implementation provisions would be governed by State rules rather than FIP

rules. This action results in the withdrawal of the Indiana CAIR FIP concerning sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions.

**DATES:** This direct final will be effective January 28, 2011, unless EPA receives adverse comments by December 29, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0515, 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](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 692-2551.

4. *Mail*: John M. Mooney, Chief, Attainment Planning and Maintenance 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, Attainment Planning and Maintenance 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.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2009-0515. 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What action is EPA taking?
- II. What is the regulatory history of CAIR and CAIR FIPs?
- III. What are the general requirements of CAIR and CAIR FIPs?
- IV. What are the types of CAIR SIP submittals?
- V. Analysis of Indiana's CAIR SIP submittals
  - A. What is the history of the State's submittals?
  - B. State Budgets for Allowance Allocations
  - C. CAIR Cap-and-Trade Programs
  - D. Applicability Provisions
  - E. Individual Opt-in Units
  - F. Deficiencies in the State's February 28, 2007, Submittal and the State's Subsequent Responses
  - G. Federal Definition of "Biomass" in Reference to "Cogeneration Unit"

- H. The State's Complete CAIR Regulations
- I. NO<sub>x</sub> Reduction Program for Specific Source Categories—Applicability
- J. Sunset Provision
- VI. Final Action
- VII. Statutory and Executive Order Reviews

### I. What action is EPA taking?

In this rulemaking EPA is fully approving Indiana's CAIR SIP, including the State's June 29, 2009, submittal. This will allow a transition from an abbreviated SIP with limited approval to a full SIP with full approval under which the various CAIR implementation provisions would be governed by State rules rather than FIP rules. This action causes the CAIR FIPs concerning SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions by Indiana sources to be automatically withdrawn.

### II. What is the regulatory history of CAIR and CAIR FIPs?

EPA published CAIR on May 12, 2005 (70 FR 25162). In that 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 NO<sub>x</sub>. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission budgets for NO<sub>x</sub> for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR establishes requirements that must be included in SIPs to address the requirements of section 110(a)(2)(D) of the CAA with regard to interstate transport for ozone and PM<sub>2.5</sub>. On April 25, 2005 (70 FR 21147), EPA made national findings 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<sub>2.5</sub> 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 section 110(c)(1) of the CAA, EPA may issue a FIP anytime after such findings are made, and must do so within two years unless EPA has approved a SIP revision correcting the deficiency before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR to ensure that the emissions reductions required by CAIR would be achieved on schedule. The CAIR FIPs required electric generating units (EGUs) to participate in the EPA-administered CAIR SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs, as appropriate. The CAIR FIP 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 was meant to create 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 CAIR FIP or SIP trading programs for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007 (72 FR 62338), a State's CAIR FIP is automatically withdrawn when EPA approves a SIP revision as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding 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, automatically replace or supplement certain 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. Therefore, because Indiana only had an abbreviated CAIR SIP in place prior to today's rulemaking, there were also elements of CAIR FIPs in effect.

On October 19, 2007 (72 FR 59190), EPA amended CAIR and 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. 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. 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.*

### III. What are the general requirements of CAIR and CAIR FIPs?

CAIR, which establishes statewide emission budgets for SO<sub>2</sub> and NO<sub>x</sub>, 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 States' 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 provides 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 each State to include all non-EGUs from its respective NO<sub>x</sub> Budget Trading Program into its respective CAIR NO<sub>x</sub> Ozone Season Trading Program.

### 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. As EPA anticipated, most States have chosen to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these

SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO<sub>x</sub> 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<sub>x</sub> Budget trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> Ozone Season Trading Program;
2. Provide for State allocation of NO<sub>x</sub> annual or ozone season allowances using a methodology chosen by the State;
3. Provide for State allocation of NO<sub>x</sub> 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 SO<sub>2</sub>, NO<sub>x</sub> Annual, or NO<sub>x</sub> Ozone Season Trading Programs under the opt-in provisions in the model rules.

An approved CAIR SIP revision addressing EGUs' SO<sub>2</sub>, NO<sub>x</sub> annual, or NO<sub>x</sub> ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, once EPA has approved a CAIR SIP submission in full, without any conditions, the CAIR FIP is automatically withdrawn. *See* 72 FR 62338.

### V. Analysis of Indiana's CAIR SIP submittals

#### A. What is the history of the State's submittals?

IDEM submitted the State's rules to address CAIR requirements on February 28, 2007, for incorporation into the SIP. On September 20, 2007, Indiana submitted a letter to EPA requesting that EPA act only on a portion of the February 28, 2007 submittal. Consequently, on October 22, 2007 (72 FR 59480) EPA gave a limited approval to portions of the February 28, 2007 submittal as an abbreviated SIP revision

which addressed the applicability provisions for the NO<sub>x</sub> ozone season trading program and supporting definitions and terms, the methodology to be used to allocate annual and ozone season NO<sub>x</sub> allowances and supporting definitions and terms, the CSP provisions for the NO<sub>x</sub> annual trading program, and provisions for SO<sub>2</sub> and NO<sub>x</sub> opt-in units, all under the CAIR FIP. EPA found several minor deficiencies in the February 28, 2007, submittal, as identified in a technical support document that accompanied the October 22, 2007, limited approval. The State's June 29, 2009, submittal sufficiently addresses these deficiencies.

On October 19, 2007, EPA revised the definition of "cogeneration unit" (72 FR 59190). Particularly of note, the term "biomass" was added so that cogeneration units could exclude biomass energy input in efficiency calculations. IDEM has made corresponding and appropriate changes that adopt the Federal definition of "cogeneration unit" and "biomass" in its June 29, 2009, submittal. Indiana's budget and allowance allocation methodologies for CAIR trading programs were also included in the June 29, 2009, submittal. The amended rules became effective State-wide on June 11, 2009, and an in-depth analysis of the June 29, 2009, submittal follows below.

#### B. State Budgets for Allowance Allocations

In today's action, EPA is reaffirming its approval of Indiana's SIP revision adopting the budgets established for the State (by EPA) in CAIR in its October 22, 2007 limited approval.

In *North Carolina*, the Court determined, among other things, that the State SO<sub>2</sub> and NO<sub>x</sub> budgets established in CAIR were arbitrary and capricious.<sup>1</sup> 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." *North Carolina*, 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.). On August 2, 2010 (75 FR 45210), EPA proposed FIPs to Reduce Interstate Transport of Fine Particulate Matter and Ozone to replace CAIR; however, that rule is not yet final. 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 SO<sub>2</sub> and NO<sub>x</sub> budgets for the CAIR trading programs) in order to "temporarily preserve" the environmental benefits achievable under the CAIR trading programs.

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

The CAIR NO<sub>x</sub> annual and ozone season model trading rules both largely mirror the structure of the NO<sub>x</sub> Budget model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO<sub>x</sub> annual and ozone season model rules are similar, there are some differences. For example, the NO<sub>x</sub> annual model rule (but not the NO<sub>x</sub> ozone season model rule) provides for a CSP, which is discussed below and 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 model rule reflects the fact that the CAIR NO<sub>x</sub> Ozone Season Trading Program replaces the NO<sub>x</sub> Budget Trading Program after the 2008 ozone season and is coordinated with the NO<sub>x</sub> SIP Call program. The NO<sub>x</sub> ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO<sub>x</sub> Budget Trading Program allowances to be used for compliance in the CAIR NO<sub>x</sub> ozone season trading program. In addition, States have the option of continuing to meet their NO<sub>x</sub> SIP Call requirements by participating in the CAIR NO<sub>x</sub> Ozone Season Trading Program and including all their NO<sub>x</sub> Budget trading sources in that program.

The provisions of the CAIR SO<sub>2</sub> model rule are also similar to the provisions of the NO<sub>x</sub> annual and ozone season model rules. However, since CAA title IV establishes an ongoing Acid Rain cap-and-trade program for SO<sub>2</sub> and not for NO<sub>x</sub>, the model rule for SO<sub>2</sub> must additionally be coordinated with the Acid Rain Program. The SO<sub>2</sub> 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 SO<sub>2</sub> cap-and-trade program, with each such allowance authorizing one 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.

In the SIP revision EPA is approving, Indiana has chosen to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Indiana has adopted State rules for a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. Finally, Indiana's rules provide that non-EGUs that were required to participate in the NO<sub>x</sub> Budget Trading Program must participate in the CAIR NO<sub>x</sub> Ozone Season Trading Program.

#### D. 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 megawatts producing electricity for sale.

States have the option of bringing in, for the CAIR NO<sub>x</sub> Ozone Season Trading Program only, those units in the State's NO<sub>x</sub> Budget 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<sub>x</sub> Budget 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> Budget Trading Program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO<sub>x</sub> Ozone Season Trading Program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.*,

<sup>1</sup> 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 reason that EPA is approving the provisions of Indiana's SIP revision that use the SO<sub>2</sub> and NO<sub>x</sub> budgets set in CAIR, EPA is also approving, as discussed below, Indiana's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and the use of title IV allowances.

units serving a generator with a nameplate capacity of 25 megawatts or less) that the State previously required to be in the NO<sub>x</sub> Budget Trading Program. Indiana has chosen to expand the applicability provisions of the CAIR NO<sub>x</sub> Ozone Season Trading Program to include all non-EGUs that were subject to the State's NO<sub>x</sub> Budget Trading Program. Indiana's February 28, 2007, abbreviated SIP submittal did not include (or modify) certain definitions that are necessary in order to expand the CAIR NO<sub>x</sub> Ozone applicability to all NO<sub>x</sub> Budget Trading units. Indiana's June 29, 2009, submittal includes these definitions and modifications. These definitions are part of today's approval and are discussed in more detail under Section H. (Deficiencies in the State's submittal and the State's subsequent responses).

#### E. 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 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 include such a unit in 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.

Consistent with this flexibility, Indiana has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO<sub>x</sub> Annual Trading Program, the CAIR NO<sub>x</sub> Ozone

Season Trading Program, and the CAIR SO<sub>2</sub> Trading Program. EPA approved Indiana's earlier version of rules authorizing these opt-ins (72 FR 59480). The complete set of rules governing CAIR NO<sub>x</sub> annual, CAIR SO<sub>2</sub>, and CAIR NO<sub>x</sub> ozone season opt-in units in Indiana are contained in 326 IAC 24–1–12, 326 IAC 24–2–11, and 326 IAC 24–3–12, respectively. Indiana's June 29, 2009, submittal includes some modifications to these parts. These modifications are part of today's approval.

#### F. Deficiencies in the State's February 28, 2007, Submittal and the State's Subsequent Responses

EPA found several deficiencies in Indiana's February 28, 2007, submittal and communicated these deficiencies to IDEM staff in August and September of 2007. The deficiencies and the State's subsequent responses to correct them are discussed in detail below. All responses to the deficiencies were provided in the State's June 29, 2009, submittal.

EPA found that Indiana needed to revise 326 IAC 24–3–1 in the following manner:

"Indiana needs to revise, in subsection (b), 'CAIR NO<sub>x</sub> ozone season units as follows:' to read 'CAIR NO<sub>x</sub> ozone season units under subsection 1(a)(1) or (3)' and revise, in subsections (b)(1), (2), and (3), 'under subsection (a)' to read 'under subsection (a)(1) or (3).';"

Indiana has made these changes verbatim; therefore, these deficiencies have been addressed and EPA concludes that the revisions to 326 IAC 24–3–1 are approvable.

EPA also found that Indiana needed to amend 326 IAC 24–3–2 by revising the definitions of "commence operation," "fossil-fuel-fired," and "unit."

IDEM addressed all of the deficiencies that EPA identified regarding the terms "commence operation," "fossil-fuel-fired," and "unit" at 326 IAC 24–3–2 (33), (44), and (80). EPA finds these revisions approvable.

EPA found that Indiana needed to add the definition of "electricity for firm sale to the electric grid," to read as follows:

"Electricity for firm sale to the electric grid means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions."

The State has added the following definition at 326 IAC 24–3–2 (38):

"'Electricity for sale under a firm contract to the electric grid' means electricity for sale where the capacity involved is intended to be

available at all times during the period covered by the guaranteed commitment to deliver, even under adverse conditions."

EPA asked IDEM for clarification concerning the phrase "for sale under a firm contract" as opposed to the model language "for firm sale." On September 25, 2009, IDEM responded that the language originated in Indiana's NO<sub>x</sub> SIP Call; therefore, all sources subject to the applicability of the NO<sub>x</sub> Budget Trading Program would also be subject to the applicability of the CAIR NO<sub>x</sub> Ozone Season Trading Program.

Because there is no applicability gap for affected sources, IDEM has addressed this deficiency. EPA therefore finds that the addition of the term "electricity for sale under a firm contract to the electric grid" to 326 IAC 24–3–2 is approvable.

EPA found that Indiana needed to revise the definition of "large affected unit" to add, after clause (B):

"(C) For units other than cogeneration units commencing operation: (i) Before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid; (ii) on or after January 1, 1997, and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five (25) megawatts and producing electricity for sale under a firm contract to the electric grid; or (iii) on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five (25) megawatts and produces electricity for sale. (D) For cogeneration units commencing operation: (i) Before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1995 or 1996 under the acid rain program; (ii) in 1997 or 1998, a unit serving a generator during 1997 or 1998 with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1997 or 1998 under the acid rain program; or (iii) on or after January 1, 1999, a unit serving at any time as a generator with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit under the acid rain program for any year."

IDEM has made all the appropriate changes at 326 IAC 24–3–2 (51) with minor wording changes, which include the clarification of the phrase, "(C) For units other than cogeneration units that are not already subject to this rule under section 1(a)(1) or 1(a)(3) of this rule commencing operation \* \* \*" and a phrase at the end of the rule that reads, "The term does not include a unit subject to 326 IAC 10–3." At 326 IAC 24–3–2 (51)(C)(iii), Indiana's rule ends with, "for sale under a firm contract to the electric grid," which differs from the

model rule which ends with, “for sale.” EPA asked for clarification of the phrase, “for sale under a firm contract to the electric grid.” On September 25, 2009, IDEM stated that, although the language differs slightly, all sources subject to the NO<sub>x</sub> Budget Trading Program would also be subject to the CAIR NO<sub>x</sub> Ozone season Trading Program. Because there is no applicability gap for affected sources, and because other revisions Indiana has made serve to clarify the existing rule, EPA finds that the revision of the term, “large affected unit” in 326 IAC 24–3–2 is approvable.

#### *G. Federal Definition of “Biomass” in Reference to “Cogeneration Unit”*

EPA changed the definition of “cogeneration unit” as it applies to CAIR, CAIR FIPs, and the CAIR model cap-and-trade rules in 72 FR 59190. Specifically, EPA revised the calculation methodology for the efficiency standard in the cogeneration unit definition to exclude energy input from biomass. At 326 IAC 24–1–2 (8), 326 IAC 24–2–2 (8), and 326 IAC 24–3–2 (8), Indiana has made this change verbatim. EPA finds the addition of the term “biomass” to the SIP approvable.

#### *H. The State’s Complete CAIR Regulations*

As discussed previously, EPA granted a limited approval to Indiana’s abbreviated SIP on October 22, 2007. This action was a result of the State’s request on September 20, 2007, that EPA act on a portion of its February 28, 2007, submittal. Consequently, EPA approved an abbreviated SIP revision for Indiana which addressed the applicability provisions for the NO<sub>x</sub> ozone season trading programs and supporting definitions of terms, the methodology to be used to allocate NO<sub>x</sub> annual and ozone season NO<sub>x</sub> allowances and supporting definitions of terms, the CSP provisions for the NO<sub>x</sub> annual trading program, and provisions for SO<sub>2</sub> and NO<sub>x</sub> opt-in units, all under the CAIR FIP.

The State’s June 29, 2009, submittal was intended to satisfy requirements that would allow us to approve Indiana’s CAIR regulations so as to transition from an abbreviated SIP with limited approval to a full SIP with full approval. Indiana addressed the deficiencies that EPA found with its existing CAIR regulations and also adopted the Federal definition of “biomass” as it pertains to “cogeneration unit.”

However, it was not clear in the June 29, 2009, submittal that IDEM was requesting full approval of the CAIR

rules contained in 326 IAC 24–1, 326 IAC 24–2, and 326 IAC 24–3. On December 9, 2009, IDEM sent a letter to EPA clarifying that such was its intent. Therefore, inasmuch as the State has cured the identified deficiencies and as such is the State’s intent, we are approving Indiana’s CAIR regulations in their entirety for incorporation into the SIP.

#### *I. NO<sub>x</sub> Reduction Program for Specific Source Categories—Applicability*

On February 28, 2007, Indiana also submitted minor revisions to 326 IAC 10–3, “NO<sub>x</sub> Reduction Program for Specific Source Categories.” Namely, the revisions pertain to the “Applicability” portion of this rule. The revisions refer to 326 IAC 24 and 326 IAC 24–3. The reference to 326 IAC 24–3 clarifies that 326 IAC 10–3–1 applies to any other blast furnace gas fired boilers with a heat input greater than 250,000,000 Btu per hour that is not subject to 326 IAC 10–4 or 326 IAC 24–3. As this revision ensures that all applicable sources are covered, EPA finds it approvable. The reference to 326 IAC 24 clarifies that the monitoring, recordkeeping, and reporting requirements under section 4 and 5 of 326 IAC 10–3–1 does not apply to a unit that opts into the NO<sub>x</sub> Budget Trading Program under 326 IAC 10–4 or 326 IAC 24. As the State’s CAIR has its own set of monitoring, recordkeeping, and reporting requirements, EPA finds this revision to be approvable.

#### *J. Sunset Provision*

EPA did not act on 326 IAC 10–4–16, “Sunset,” when Indiana submitted the rule as part of its original CAIR package on February 28, 2007. We are approving this rule into the Indiana SIP today, and it reads:

“Sec. 16. (a) Sections 1 through 15 of this rule shall not apply to any control period in 2009 or thereafter. The 2009 NO<sub>x</sub> allowances allocated under section 9 of this rule remain in effect for purposes of the Clean Air Interstate Rule (CAIR) NO<sub>x</sub> ozone season trading program in 326 IAC 24–3.

(b) By December 31, 2008, the department shall allocate any remaining allowances for the years 2004 through 2008 in the EGU or large affected unit new unit set-aside or the energy efficiency and renewable energy set-aside to the relevant existing NO<sub>x</sub> budget units on a pro rata basis. The allowances from the energy efficiency and renewable energy set-aside shall be allocated to existing large affected units.”

Approval of the termination of the NO<sub>x</sub> Budget Trading Program provision ensures that there are no conflicts between allocations made under the NO<sub>x</sub> Budget Trading Program and allocations made under the CAIR NO<sub>x</sub> Ozone Season Trading Program. The

NO<sub>x</sub> SIP Call requirements will now be met through the implementation of CAIR.

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

EPA is approving revisions to Indiana’s CAIR, which the State submitted on June 29, 2009. The rules supplement the State’s original CAIR, for which EPA promulgated limited approval on October 22, 2007 (72 FR 59480). The State has corrected deficiencies in its original CAIR submittal, and has made appropriate revisions that align State and Federal definitions for “cogeneration unit” and “biomass,” as contained in 72 FR 59190. In addition, EPA is approving into the Indiana SIP the remainder of Indiana’s CAIR regulations upon which we did not previously act. EPA is also approving the applicability provisions of Indiana’s NO<sub>x</sub> Reduction Program for Specific Source Categories, as well as the sunset provision from Indiana’s NO<sub>x</sub> Budget Trading Program. Lastly, EPA is approving minor wording, formatting, and typographical changes contained in the State’s submittal; since these changes serve to clarify the existing rules or to correct minor errors, EPA finds them approvable. With this approval, Indiana has transitioned from an abbreviated CAIR SIP with limited approval to a full SIP with full approval. After the effective date of this direct final rule, Indiana will no longer be subject to elements of CAIR FIPs. This action causes the CAIR FIPs with regard to sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions by Indiana sources to be automatically withdrawn.

Specifically, EPA is approving the following rules, which were submitted on June 29, 2009: 326 IAC 24–1–2, 326 IAC 24–1–7, 326 IAC 24–1–8, 326 IAC 24–1–9, 326 IAC 24–1–12, 326 IAC 24–2–2, 326 IAC 24–2–7, IAC 24–2–8, IAC 24–2–11, IAC 24–3–1, IAC 24–3–2, IAC 24–3–7, IAC 24–3–8, IAC 24–3–9, IAC 24–3–12. The rules became effective State-wide on June 11, 2009.

EPA is also approving the remainder of the State’s CAIR regulations, which were submitted on February 28, 2007. These rules include: 326 IAC 24–1–1, 326 IAC 24–1–3, 326 IAC 24–1–4, 326 IAC 24–1–5, 326 IAC 24–1–6, 326 IAC 24–1–10, 326 IAC 24–1–11, 326 IAC 24–2–1, 326 IAC 24–2–3, 326 IAC 24–2–4, 326 IAC 24–2–5, 326 IAC 24–2–6, 326 IAC 24–2–9, 326 IAC 24–2–10, 326 IAC 24–3–3, 326 IAC 24–3–4, 326 IAC 24–3–5, 326 IAC 24–3–6, 326 IAC 24–3–10, and 326 IAC 24–3–11. These rules became effective State-wide on February 25, 2007.

As previously mentioned, EPA is further approving revisions submitted on February 28, 2007, pertaining to the State's Nitrogen Oxide Reduction Program for Specific Source Categories, Applicability provisions as contained in 326 IAC 10–3–1. This revision was effective State-wide on February 25, 2007. Lastly, EPA is approving the sunset provision in their NO<sub>x</sub> Budget Trading Program; this specific provision is contained in 326 IAC 10–4–16. This rule was submitted on February 28, 2007, and became effective State-wide on February 25, 2007.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective January 28, 2011 without further notice unless we receive relevant adverse written comments by December 29, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective January 28, 2011.

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this 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 CAA; 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 rule 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.

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 action 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 January 28, 2011. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Sulfur oxides.

Dated: November 15, 2010.

**Susan Hedman,**

*Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart P—Indiana

### § 52.35 [Amended]

■ 2. Section 52.35 is amended by:

- a. In paragraph (d)(1), by adding, after the word "are:", the words "Indiana, and"; and
- b. In paragraph (d)(2), by adding, after the words "chapter, are:", the words "Indiana, and".

### § 52.36 [Amended]

■ 3. Section 52.36 is amended in paragraph (c) by adding, after the word "are:", the words "Indiana, and".

■ 4. In § 52.770, the table in paragraph (c) is amended by:

■ a. Revising the entries for Article 10, sections 10–3 and 10–4.

■ b. Revising the entries for Article 24, sections 24–1, 24–2 and 24–3.

■ The revisions read as follows:

### § 52.770 Identification of plan.

|     |   |   |   |   |
|-----|---|---|---|---|
| *   | * | * | * | * |
| (c) | * | * | * |   |

## EPA-APPROVED INDIANA REGULATIONS

| Indiana citation                                                                                          | Title                                                                          | Indiana effective date | EPA approval date                                           | Notes                       |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|------------------------|-------------------------------------------------------------|-----------------------------|
| *                                                                                                         | *                                                                              | *                      | *                                                           | *                           |
| <b>Article 10. Nitrogen Oxides Rules</b>                                                                  |                                                                                |                        |                                                             |                             |
| 10-3 .....                                                                                                | Nitrogen Oxide Reduction Program for Specific Source Categories.               | 02/25/2007             | 11/29/2010, [Insert page number where the document begins]. | Sec. 1.                     |
| 10-4 .....                                                                                                | Nitrogen Oxides Budget Trading Program ..                                      | 02/25/2007             | 11/29/2010, [Insert page number where the document begins]. | Sec. 16.                    |
| *                                                                                                         | *                                                                              | *                      | *                                                           | *                           |
| <b>Article 24. Trading Programs: Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>)</b> |                                                                                |                        |                                                             |                             |
| 24-1 .....                                                                                                | Clean Air Interstate Rule Nitrogen Oxides Annual Trading Program.              | 02/25/2007             | 11/29/2010, [Insert page number where the document begins]. | Sec. 1, 3, 4, 5, 6, 10, 11. |
|                                                                                                           |                                                                                | 06/11/2009             | 11/29/2010, [Insert page number where the document begins]. | Sec. 2, 7, 8, 9, 12.        |
| 24-2 .....                                                                                                | Clean Air Interstate Rule (CAIR) Sulfur Dioxide Trading Program.               | 02/25/2007             | 11/29/2010, [Insert page number where the document begins]. | Sec. 1, 3, 4, 5, 6, 9, 10.  |
|                                                                                                           |                                                                                | 06/11/2009             | 11/29/2010, [Insert page number where the document begins]. | Sec. 2, 7, 8, 11.           |
| 24-3 .....                                                                                                | Clean Air Interstate Rule (CAIR) NO <sub>x</sub> Ozone Season Trading Program. | 02/25/2007             | 11/29/2010, [Insert page number where the document begins]. | Sec. 3, 4, 5, 6, 10, 11.    |
|                                                                                                           |                                                                                | 06/11/2009             | 11/29/2010, [Insert page number where the document begins]. | Sec. 1, 2, 7, 8, 9, 12.     |

\* \* \* \* \*

**§ 52.789 [Removed]**

■ 5. Section 52.789 is removed.

**§ 52.790 [Removed]**

■ 6. Section 52.790 is removed.

[FR Doc. 2010-29788 Filed 11-26-10; 8:45 am]

BILLING CODE 6560-50-P

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

[EPA-R03-OAR-2010-0594; FRL-9231-9]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Industrial Solvent Cleaning Operations; Withdrawal of Direct Final Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule to approve revisions to Maryland's State

Implementation Plan (SIP). This SIP revision consists of an addition to Maryland's Volatile Organic Compounds from Specific Processes Regulation. Maryland Department of the Environment (MDE) adopted standards for industrial solvent cleaning operations that satisfy the reasonably available control technology (RACT) requirements for sources of volatile organic compounds (VOCs) covered by control techniques guidelines (CTG). In the direct final rule published on September 29, 2010 (75 FR 59973), we stated that if we received any adverse comments by October 29, 2010, the rule would be withdrawn and would not take effect. EPA received an adverse comment within the comment period. EPA will address the comment received in a subsequent final action based upon the proposed action also published on September 29, 2010 (75 FR 60013). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 75 FR 59973, September 29, 2010, is withdrawn as of November 29, 2010.**ADDRESSES:** EPA has established docket number EPA-R03-OAR-2010-0594 for

this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Lewis, (215) 814-2037, or by e-mail at [lewis.jacqueline@epa.gov](mailto:lewis.jacqueline@epa.gov).**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 16, 2010.

**W.C. Early,***Acting, Regional Administrator, Region III.*

■ Accordingly, the amendment to the table in 40 CFR 52.1070(c), published on September 29, 2010 (75 FR 59973) on page 59975 is withdrawn as of November 29, 2010.

[FR Doc. 2010-29815 Filed 11-26-10; 8:45 am]

BILLING CODE 6560-50-P